TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 233.

THE CREDITS COMMUTATION COMPANY AND THE COMBINATION BRIDGE COMPANY, APPELLANTS,

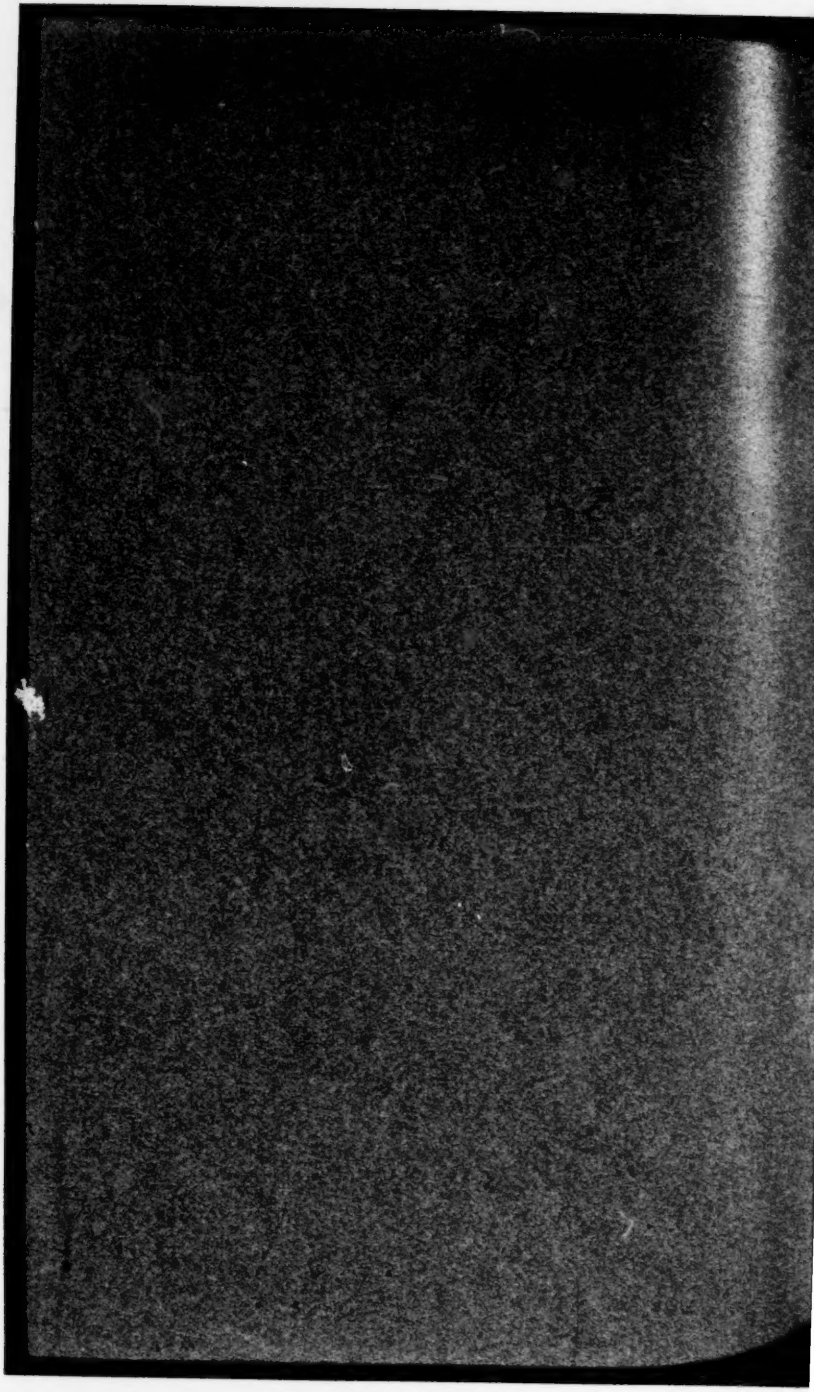
vs.

THE UNITED STATES ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED MARCH 18, 1899.

(17,326.)



(17,326.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 233.

THE CREDITS COMMUTATION COMPANY AND THE COMBINATION BRIDGE COMPANY, APPELLANTS,

vs.

THE UNITED STATES ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print.
Caption to transcript	*a*	1
Transcript from United States circuit court	1	1
Caption to transcript	1	1
Bill of complaint	1	1
Exhibit A—Schedule of bonds of Union Pacific Railroad Company, showing dates of issue, maturity, etc.	22	19
B—Statement showing interest paid to the United States on bonds of Union Pacific Railway Company, etc.	24	20
C—Statement of bonds in sinking fund of the Union Pacific railroad, January 16, 1897	26	23
Separate answer of the Union Pacific Railway Company	26	24
Separate answer of S. H. H. Clark *et al.*, receivers	40	35
Petition of Credits Commutation Company for leave to intervene	49	43
Section 15 of the act of Congress of July 1, 1862	55	49
Section 14 of the act of Congress of July 1, 1862	58	52

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 1, 1899.

	Original.	Print.
Section 17 of the act of Congress of July 2, 1864	58	52
Section 15 of the act of Congress of July 2, 1864	60	54
Section 17 of the act of Congress of 1862	66	60
Section 12 of the act of Congress of 1862	67	61
Portion of act of Congress of March 3, 1869	67	61
Section 18 of the act of Congress of July 1, 1862	70	64
Section 10 of the act of Congress of May 7, 1878	75	69
Section 6 of the act of Congress of July 1, 1862	76	70
Portion of section 5 of the act of Congress of July 1, 1862	77	71
Section 11 of the act of Congress of May 7, 1878	77	71
Abstracts of argument of the railroad company in the case of United States *vs.* Union Pacific Railroad Company	77	71
Section 4 of the act of Congress of March 3, 1887	80	74
Portion of opinion of Supreme Court in the case of United States *vs.* Union Pacific Railroad Company, 91 U. S., 72	85	79
Portion of opinion of Supreme Court in the case of Union Pacific Railroad Company *vs.* United States, 99 U. S., 700	85	79
Portion of opinion in the case of United States *vs.* Western Union Telegraph Company, 50 Fed. Rep., 42	86	80
Remarks of Stuyvesant Fish before House committee	86	80
Portion of report of Senate Committee on Pacific Railroads	86	80
Portion of report of author of the commission bill introduced in the House of Representatives	87	81
Portion of report of the minority of the House committee	87	81
Portion of act of Congress of March 3, 1873	88	82
Portion of act of Congress of 1862 in respect of the lien of the Government bonds	94	88
Amendment of 1864, authorizing the first-mortgage bonds	94	88
Portion of decision of Supreme Court in Union Pacific Railway Company *vs.* United States, 99 U. S., 402	94	88
Portion of opinion of Supreme Court in Union Pacific Railway Company *vs.* United States, 99 U. S., 700	104	98
Portion of opinion of Supreme Court in United States *vs.* Union Pacific Railway Company, 160 U. S., 1	108	102
Portion of section 15 of the act of Congress of July 1, 1862	109	102
Section 6 of the act of Congress of June 19, 1878	110	104
Section 18 of the act of Congress of July 1, 1862	111	105
Arrangement between reorganization committee and Kuhn, Loeb & Company	118	112
Representation made to the stockholders to surrender stock to the reorganization committee	119	113
Representation made to bondholders and stockholders	119	113
Representation made by the reorganization committee to the security-holders	120	114
Remarks of Senator Brice before United States Senate committee	130	124
Portion of report of Senate committee of April 8, 1897	136	130
Portion of report of majority of House committee of February 11, 1897	136	130
Portion of report of the minority of the House committee	136	130
Order on respondents to show cause why Credits Commutation Company should not be permitted to intervene	147	141

	Original	Print.
Report of the attorney general to the Senate, January 23, 1897	151	145
Letter, Grover Cleveland to attorney general, January 12, 1897	151	145
Letter, attorney general to Louis Fitzgerald, chairman, January 18, 1897	152	146
Letter, Louis Fitzgerald, chairman, to attorney general, January 20, 1897	153	147
Letter, Louis Fitzgerald, chairman, to special assistant to attorney general, January 15, 1897	153	147
Amendments to petition of Credits Commutation Company for leave to intervene	155	149
Petition of Combination Bridge Company for leave to intervene	159	151
Order denying petitions for leave to intervene	161	152
Petition for appeal	162	153
Assignment of errors	163	154
Bond on appeal	164	155
Order allowing appeal	166	157
Citation	167	158
Admissions of service of citation	167	158
Clerk's certificate to transcript	170	161
Appearance of counsel for appellants	171	161
Mr. Hoadly for the United States	171	162
Mr. Cowin for the United States	172	162
Messrs. Dillon and Kelly	172	163
Messrs. Pierce and Lambertson	173	163
Proof of service of motion to dismiss	174	163
Motion of Dexter *et al.* to dismiss	174	164
Notice of motion of Dexter *et al.* to dismiss	175	164
Proof of service of notice of motion to dismiss	177	165
Notice of motion to dismiss of Union Pacific Railway Company and receivers	177	166
Motion of Union Pacific Railway Co. and receivers to dismiss	178	166
Notice and amended motion of Dexter *et al.* to dismiss	181	168
Notice and amended motion of Union Pacific Railway Company and receivers to dismiss	184	170
Proof of service and notice of motion of United States to dismiss	187	172
Motion of United States to dismiss	188	173
Certificate of clerk of circuit court as to time of filing assignment of errors	191	175
Order: Cause submitted	192	176
Opinion of United States circuit court of appeals	192	177
Decree of United States circuit court of appeals	197	181
Petition for appeal	199	182
Assignment of errors	200	183
Bond on appeal	202	184
Order allowing appeal	204	186
Citation	206	186
Clerk's certificate to transcript	210	188

a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the December term, 1898, of said court, begun and held at the United States court-house, in the city of St. Louis, Missouri, on the first Monday in December, to wit, the fifth day of December, A. D. 1898, before the Honorable Henry C. Caldwell and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the ninth day of September, A. D. 1897, a transcript of record, pursuant to an appeal allowed by the circuit court of the United States for the district of Nebraska, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit; which said transcript of record is in the words and figures following, to wit:

1 Pleas before the Honorable Walter H. Sanborn, judge of the circuit court of the United States for the eighth judicial circuit, sitting in the circuit court of the United States for the district of Nebraska, within the said eighth judicial circuit, at the term of May, A. D. 1897.

Be it remembered that on the 23rd day of January, 1897, bill of complaint was filed in the clerk's office of said court, in the case of The United States of America *vs.* The Union Pacific Railway Company *et al.*; which said bill of complaint is in the words and figures following, to wit:

To the honorable the circuit court of the United States for the eighth circuit and district of Nebraska, in equity sitting:

The United States of America, by Judson Harmon, Attorney General, acting in the premises by direction of the President of the United States, under the authority of the tenth section of the act of Congress, approved May 7th, 1878, and entitled—

"An act to alter and amend the act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes,' approved July first, eighteen hundred and sixty-two, and also to alter and amend the act of Congress approved July second, eighteen hundred and sixty-four, in amendment of said first-named act,"

and under the authority of the fourth section of the act of Congress, approved March 3, 1887, entitled—

"An act authorizing an investigation of the books, accounts and methods of railroads, which have received aid from the United States, and for other purposes,"

now bring this their bill of complaint against the Union Pacific Railway Company, a corporation organized and existing under the laws of the United States of America, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert and John W. Doane, receivers now in possession of and operating said railway, as hereinafter described, F. Gordon Dexter and Oliver Ames, as trustees,
Union Trust Company of New York as trustee, J. Pierpont
2 Morgan and Edwin F. Atkins, as trustees, Central Trust Company of New York, as trustee; and thereupon the United States of America, by the Attorney General aforesaid, show unto your honors as follows:

That the Union Pacific Railroad Company was a corporation created by and existing under certain laws of the United States, to wit, an act of Congress, entitled—

"An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes,"

approved July first, 1862, also an act of Congress amendatory thereof, approved July second, 1864, and other acts of Congress amendatory thereof and supplementary thereto.

That the said Union Pacific Railway Company as now existing, was formed on or about the twenty-fourth day of January, 1880, under and by virtue of the powers and provisions contained in said several acts of the Congress of the United States, by a consolidation of the said Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, each of which said three companies were named and described in the acts of Congress aforesaid, and that the said Union Pacific Railway Company so created by said consolidation thereupon became successors to each and all of said constituent companies, and thereby became vested with all the rights, titles, interests, properties and franchises of each and all of said constituent companies.

That the said Union Pacific Railway Company is insolvent and its property is possessed by and in the hands of receivers as hereinafter stated, and that its general office and principal place of business is situated in the city of Omaha, in the State and district of Nebraska.

That by the second section of said act of Congress, approved July 1st, 1862, entitled—

"An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes,"

it was, after the provision for the organization of the said Union Pacific Railroad Company, enacted, that the said corporation created by said act, should be authorized and empowered to lay out, con-

struct, furnish, maintain and enjoy a continuous railroad and
3 telegraph with the appurtenances from a point in the one hundredth meridian of longitude, west from Greenwich, between the south margin of the valley of the Republican river, and the north margin of the valley of the Platte river, in the Territory of Nebraska to the west boundary of Nevada Territory, upon the route and terms thereinafter in said act provided, and should be for said purpose vested with all the powers, privileges and immunities necessary to carry the same into effect; and further that the right of way through the public lands should be and the same was thereby granted to said company for the construction of said railroad and telegraph lines, and the right, power and authority was thereby given to said company to take from the public lands adjacent to the line of said road, earth, stone, timber and other materials for the construction thereof. And said right of way was thereby granted to said railroad, to the extent of two hundred feet in width, on each side of said railroad where it might pass over the public lands, including all necessary grounds for stations, buildings, workshops and depots, machine shops, switches and side tracks, turn tables and water stations.

That there should be and was thereby granted to said company, for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of mail, troops and munitions of war and public stores thereon every alternate section of public land designated by odd numbers to the amount of five alternate sections per mile on each side of said railroad on the line thereof, and within the limits of ten miles on each side of said road not sold, reserved or otherwise disposed of by the United States, and to which a pre-emption or homestead claim might not have attached at the time the line of said road would be definitely fixed, provided that all mineral land should be excepted from the operation of said act, and that all such lands which should not be sold or disposed of by said company within three years after the completion of said railroad should be subject to settlement and pre-emption like other lands, at a price not exceeding one dollar and twenty-five cents per acre to be paid to said company; that whenever said company should have completed forty consecutive miles of any portion of said railroad or telegraph line, the President of the United States should appoint three commissioners to examine the same, and if it should appear to him that forty consecutive miles of any portion of said railroad or telegraph line had been completed and equipped, in all respects as required by said act, thereupon upon certificate of said commissioners to that effect,
patents for said lands should issue to said company on each
4 side of said railroad, so far as the same was thus completed and so on in like manner, as each forty miles of said railroad and telegraph lines should be completed.

That by the fifth section of said act it was provided that upon the certificate in writing of said commissioners of the completion and equipment of forty consecutive miles of said railroad and telegraph in accordance with the provisions of said act, the Secretary

of the Treasury should issue to the said company bonds of the United States of one thousand dollars each, payable in thirty years after date, bearing six per cent. per annum interest (said interest payable semi-annually), said interest to be paid in United States Treasury notes or any other money or currency, which the United States might declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for said section of forty miles, and to secure the repayment to the United States as thereinafter provided, of the amount of said bonds so issued and delivered to the said company, together with all interest thereon, which should have been paid by the United States, the issue and delivery of said bonds to the company should, *ipso facto*, constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds might be issued, and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of said act, the said road, with all the rights, functions, immunities and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which at the time of said default might remain in the ownership of said company, might be taken possession of by the Secretary of the Treasury for the use and benefit of the United States.

And by the sixth section of the said act it was further provided that the grants aforesaid were made upon the condition that said company should pay said bonds at maturity, and keep said railroad and telegraph line in repair and use, and should at all times transmit messages over the telegraph line and transport mail, troops and munitions of war, and supplies and public stores upon said railroad, for the Government, whenever required so to do by any department thereof, and that the Government should, at all times, have the preference in the use of the same for all the purposes aforesaid (at fair and reasonable rates of compensation not to exceed the amounts paid by private parties for the same kind of service), and that all compensation for services rendered the Government should be applied to the payment of said bonds and interest until the whole amount should be fully paid; that said company might also pay the United States wholly or in part in the same or other bonds, Treasury notes or other evidences of debt against the United States, to be allowed at par, and that after said railroad should be completed, and until the said bonds and interest should be paid, at least five per centum of the net earnings of the said railroad should be annually applied to the payment thereof.

And that by the eleventh section of said act it was further provided that for three hundred miles of said railroad, mostly mountainous and difficult of construction, to wit, one hundred and fifty miles westwardly from the eastern base of the Rocky mountains, and one hundred and fifty miles eastwardly from the western base of the Sierra Nevada mountains, said points to be fixed by the President of the United States, the bonds to be issued to aid in the con-

struction thereof should be treble the number per mile thereinbefore provided, and the same should be issued and the land therein granted be set apart upon the construction of every twenty miles thereof, upon the certificate of commissioners aforesaid, that twenty miles of the same had been completed, and between the sections last named, of one hundred and fifty miles each that the bonds be issued to aid in the construction thereof should be double the number per mile first above, and that the same should be issued and the lands set apart upon the construction of every twenty miles thereof, upon the certificate of said commissioners that twenty miles of the same had been completed, provided that no more than fifty thousand of said bonds should be issued under said act to aid in constructing the main line of said railroad and telegraph.

And by the twelfth section of said act provision was made for connection of the route of said railroad with other railroads extending westwardly and in case of difference of location that the same should be settled by the President of the United States, and that the track of the entire line of railroad and branches should be of uniform gauge or width to be determined by the President of the United States.

And by the fourteenth section of said act it was provided that the said Union Pacific Railroad Company should be and it was thereby authorized and required to construct a single line of said railroad and telegraph from a point on the western boundary on the State of Iowa to be fixed by the President of the United States upon the most direct and practical route, to be subject to his approval,
6 from the said point of commencement, so as to form a connection with the lines of said company at some point on the one hundredth meridian of longitude upon the terms and conditions contained in said act for the construction of the said railroad and telegraph before mentioned and that said company should complete one hundred miles of its railroad and telegraph within two years after filing its assent to the conditions of said act, and at the rate of one hundred miles thereafter until the whole should be completed.

And by section eighteen it was provided that the better to accomplish the object of said act, viz., to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, Congress might at any time, having due regard for the rights of said companies named therein, amend, alter or repeal said act.

And complainants further aver that by the third section of said amendatory act of Congress, approved July 2, 1864, it was provided that the width of the strip of land authorized to be taken for the construction and working of said road, was reduced to a width not exceeding one hundred feet on each side of the centre line of said railroad, unless a greater width should be required for the purpose of excavation or embankment and also that said company might enter upon, purchase, take and hold any land or premises necessary and proper for turnouts, standing places for cars, depots, station-

houses and any other structures required in the construction and operation of said road.

And further, by the fourth section of said act, it was provided that the number of alternate sections of land granted for the purpose of aiding in the construction of said railroad should be increased from five to ten, within the limits of twenty miles on each side of the said railroad, not sold, reserved or otherwise disposed of by the United States and to which a pre-emption or homestead claim might not have attached at the time said railroad should be definitely fixed, and further that within two years after the passage of said act said company should designate the general route of said road as near as might be and file a copy in the Department of the Interior, whereupon that the Secretary of the Interior should cause the lands within twenty-five miles of said designated route or routes to be withdrawn from pre-emption, private entry and sale, and that whenever any portion of said route should be finally located, said Secretary
7 should cause the said lands to be certified and set off as fast as might be necessary for the purposes in said act named.

And further by the fifth section of said amendatory act it was provided that the time for designating the general route of said railroad and filing the map of the same, and for completing that part of the railroads required by the terms of said act, be and the same should be extended for one year from the time designated in said act approved July 1st, 1862; and further that only one-half of the compensation for services rendered for the Government by said company should be required to be applied to the payment of the bonds issued by the Government in aid of the construction of the said roads.

And by the eighth section of said amendatory act it was further provided that for the purpose of facilitating the work on said railroad and enabling the said company as early as practicable to commence its grading in the regions of the mountains, it was provided that whenever the chief engineer of said company and said commissioners should certify under oath that a certain proportion of the work required to prepare the road for the superstructure on any section of twenty miles should be done the Secretary of the Treasury was thereby authorized and required, upon delivery of said certificate, to deliver said company a proportion of said bonds not exceeding two-thirds of the amount authorized to be issued under the provisions of the said act to aid in the construction of said section of twenty miles, in no case exceeding two-thirds of the value of the work done, the remaining one-third to remain until the said section should be fully completed and certified.

And the complainants further aver that in and by the terms of the ninth section of the said amendatory act, authority was given to the Union Pacific Railroad Company to construct bridges over the Missouri river, and all other rivers, for the convenience of said road, provided that any bridge or bridges so constructed over the Missouri river or any other navigable river on the line of the said road, should be constructed with suitable and proper draws for the passage of steamboats, and should be built, kept and maintained at

the expense of said company in such manner as not to impair the usefulness of said rivers for navigation to any greater extent than such structures of the most approved character necessarily do.

And the complainants further aver that in and by the terms of the tenth section of the said amendatory act, approved July 2, 1864, the fifth section of the act approved July 1, 1862, was so modified and amended, that the Union Pacific Railroad Company might,

upon completion of each section of said road, as provided in
8 said act, and the said act to which the same was an amendment, issue its first-mortgage bonds on its railroad and telegraph line to an amount not exceeding the said bonds of the United States, and of even tenor and date, time of maturity and rate and character of interest with the bonds authorized to be issued by the United States to said railroad companies respectively, and that the lien of the United States bonds should be subordinate to that of the bonds of said company thereby authorized to be issued on its railroad property and equipment, except as to the provisions of the sixth section of the act approved July 1, 1862, relating to the transmission of despatches and the transportation of mails, troops and munitions of war, supplies and public stores for the Government of the United States, and that said fifth section of said act approved July 1st, 1862, should be further amended by striking out the words "forty" and inserting in lieu thereof the words "on each and every section of not less than twenty," so that upon the completion and equipment of twenty consecutive miles of said railroad and the certificate thereof, the Secretary of the Treasury thereby was required to issue to said company bonds of the United States of the tenor, rate and amount designated in the fifth section of said act approved July 1st, 1862, as hereinbefore set forth.

And the complainants further aver that by the sixteenth section of said amendatory act further power was given to said Union Pacific Railroad Company and other companies described in said acts to unite and consolidate their organizations in manner and form as described in said act, for further particulars whereof reference is here had and made to the sixteenth section of said act as adopted by Congress and approved by the President.

And in and by said section further provision was made for the connection of said Union Pacific Railroad Company with the Central Pacific Railroad Company, which, by said acts, had been created and authorized to build a railroad from a point in the State of California, eastwardly, to a junction with the said Union Pacific railroad, at a point to be fixed in the manner described in said acts.

And the complainants further state that on the 17th day of November, 1863, and the 7th day of March, 1864, the President of the United States, by executive orders of those dates, respectively fixed the eastern terminus of the Union Pacific railroad on the Iowa bank of the Missouri river—

"At a point on the western boundary of Iowa, east of and opposite
to the east line of section ten, in township fifteen, north of
9 range B, east of the sixth principal meridian, in the Territory of Nebraska."

That in and by an act of the Congress of the United States, approved March 3d, 1865, it was enacted that the tenth section of said act of July 2d, 1864, be so modified and amended as to allow the said Union Pacific Railroad Company, among other companies, to issue its six per centum thirty-year bonds, interest payable in lawful money of the United States, upon its separate road, and to issue its bonds to the extent of 100 miles in advance of a continuous completed line of construction.

And the complainants further aver that under and in pursuance of the provisions of said acts approved July 1st, 1862, and July 2d, 1864, and other acts amendatory thereto, the said Union Pacific Railroad Company, in accordance with said acts, built and completed a railroad and telegraph line on the most direct and practicable route, and approved by the President of the United States, and equipped the same with rolling stock from its said eastern terminus through the States of Nebraska, Wyoming and Colorado, to the western terminus, at a connection or junction with the Central Pacific railroad, at a point about five miles west of Ogden in the then Territory but now State of Utah, a distance of one thousand and forty-two and $\frac{93}{100}$ (*dollars*) miles, more or less, including a bridge over the Missouri river between Council Bluffs, in the State of Iowa, and Omaha aforesaid, and remained in possession thereof, and operated the same under said authority, until the appointment of receivers as hereinafter recited.

And the United States of America further state that under and in pursuance of the act of the Congress of the United States, approved May 7th, 1878, entitled—

"An act to alter and amend the act entitled An act to aid in the construction of the railroad and telegraph line from Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes, approved July 1st, 1862, and also to alter and amend the act of Congress approved July 2, 1864, in amendment of the said first-named act,"

it was recited, among other things, that the United States upon demand of said Union Pacific Railroad Company had theretofore issued, by way of loan to it, and as provided in said acts, the bonds of the United States payable in thirty years from the date thereof, with interest at six per cent per annum, payable half-yearly, the principal sums of which amounted to $27,236,512, on which the United States had paid over ten million dollars interest over and above all reimbursements, which said bonds had been sold in the market or otherwise disposed of, by said company, and said corporation had issued and disposed of an amount of its own bonds equal to the amount so issued to it by the United States as aforesaid, and secured the same by mortgage, which were, if lawfully issued and disposed of, a prior and paramount lien in the respect mentioned in said acts to that of the United States, as stated, and secured thereby, for which and other reasons recited in the preamble of said act, it was provided by said act that the net earnings mentioned in the act of 1862 of said company should be ascertained

by deducting from the gross amount of its earnings the necessary expenses actually paid in the year in operating the same and keeping the same in a state of repair, and also the sum paid by it within the year in discharge of interest on its first-mortgage bonds, whose lien has priority over the lien of the United States, and excluding from consideration all sums owing or paid by said company for interest upon any other portion of its indebtedness, but that said provision should not affect any right of the United States or of said railroad company prior to June 30, 1878, and by the second section of said act it was further provided that the whole amount of compensation, which might, from time to time, be due to the said railroad company for services rendered to the Government should be retained by the said United States, one-half thereof to be applied to the interest paid or to be paid by the United States upon bonds so issued by it as aforesaid, to said corporation, and the other one-half thereof be turned into the sinking fund provided by said act, for the use therein mentioned, and further that there should be established in the Treasury of the United States a sinking fund which should be invested by the Secretary of the Treasury, and the semi-annual income thereof in like manner reinvested, and that the same should accumulate and be disposed of as mentioned in said act. That there should be carried to the credit of the said sinking fund, on the first day of February in each year, the one-half of the compensation for services therein named rendered for the Government by the said Union Pacific Railroad Company not applied in liquidation of interest, and in addition thereto said company should on said day in each year pay into the Treasury to the credit of said sinking fund the sum of eight hundred and fifty thousand dollars, or so much thereof as should be necessary to make the five per cent. of the net earnings of its said road payable to the United States under said act of 1862, and the whole sum earned by the company as compensation for services rendered by the United States, together with the sum by said section required to be paid, amount- in the aggregate to
11 twenty-five per centum of the whole net earnings of said railway company ascertained and defined as thereinbefore provided for the year ending on the 31st day of December next preceeding.

And further, by the fifth section of the said act it was provided that whenever it should be made to appear to the Secretary of the Treasury by said company that seventy-five per cent. of its net earnings, as they had defined for any current year, are or were insufficient to pay the interest for each year upon the obligations of said company, in respect of which obligations there might exist a lien prior to that of the United States, and that said interest had been paid out of the said net earnings, the said Secretary was authorized and it was made his duty to remit for said current year so much of the twenty-five per cent. of the net earnings required to be paid into the sinking fund aforesaid as had been thus applied and used in payment of interest aforesaid, and by the seventh section of said act it was further provided that said sinking fund should at the maturity of the said bonds, be applied to the payment and sat-

isfaction thereof, and of all interest paid by the United States and not reimbursed subject to the provisions of the eighth section of the act, and by the said eighth section it (*it*) was further provided that said sinking fund should be held for the protection, security and benefit of the lawful and just holders of any mortgage or lien debts of said company lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable upon the said funds so required to be paid into the said sinking fund, according to their respective lawful priorities as well as for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking fund should be entitled thereto in due order; that the provisions of said section should not operate or be held to impair any existing legal right, except in the manner in said act provided, of any mortgage, lien or other creditor of said company nor to excuse said company from the duty of discharging out of other funds its debts to any creditor except the United States.

And by the ninth section of said act it was further provided that all sums due to the United States from said company, whether payable presently or not, and all sums required to be paid to the United States or into the Treasury or into said sinking fund under said act, or any other act of Congress, were thereby declared to be a lien upon the property, estate, rights and franchises of every description granted or conveyed by the United States to said company, and also upon all the estate and property, real, personal and mixed,
12 assets and income of the said company from whatever source derived, subject to any lawful paramount lien or claim thereon, but that said section should not be construed to prevent said company from using and disposing of any of its property or assets in the ordinary, proper and lawful course of its current business, in good faith and for a valuable consideration.

And further by the tenth section of said act it was made the duty of the Attorney General of the United States to enforce all the rights of the United States under said act, and any other act, by proper proceeding against the said railroad company, and in any suit or proceeding that might be so commenced against said company in respect of matters arising under said act or under the acts or rights thereinbefore mentioned or referred to therein, it should be the duty of the court to determine the very right of the matter without regard to matters of form, joinder or parties, multifariousness or other matters not affecting the substantial rights and duties arising out of the matters and acts in said act stated and referred to.

And further, by the eleventh section of the said act it was provided that if said railroad company should fail to perform all and singular the requirements of said act, and said other acts therein mentioned, or any other act relating to the said company for the period of six months after such performance might be due, such failure should operate as a forfeiture of all the rights, privileges and grants and franchises derived or obtained by it from the United States, and that it should be the duty of the Attorney General to cause the said forfeiture to be judicially enforced.

And by the twelfth section of said act, it was further provided that nothing in said act should be construed or taken to affect or impair the right of Congress at any time thereafter further to alter, amend or repeal said acts, and the said act approved May 7th, 1878, should be subject to alteration, amendment or repeal as in the opinion of Congress, justice or the public welfare might require, and that nothing therein contained should be held to deny or impair any right or remedy then existing in favor of the United States.

And the complainants further state that on the 3d of March, 1887, Congress adopted, and the President approved an act entitled—

"An act authorizing an investigation of the books, accounts and methods of railroads which have received aid from the United States, and for other purposes,"

13 and that by the fourth section thereof it was provided that whenever, in the opinion of the President it should be deemed necessary to the protection of the interests and the preservation of the security of the United States in respect of its lien, mortgage or other interest in any of the property of any or all the said companies, upon which a lien, mortgage or other incumbrance paramount to the right, title or interest of the United States for the same property or any part of the same that might exist, and then be lawfully liable to be enforced, the Secretary of the Treasury should under the direction of the President redeem or otherwise clear off such paramount lien, mortgage or other incumbrance by paying the sums lawfully due in respect thereof out of the Treasury, and the United States should thereupon become and be subrogated to all rights and securities theretofore pertaining to the debt, mortgage, lien or other incumbrance in respect of which said payment should be made, and further that it should be the duty of the Attorney General under the direction of the President, to take such steps, and further proceedings, in the courts and otherwise, as should be needful to redeem such lien, mortgage or other incumbrance, and to protect and defend the rights and interests of the United States in respect of the matters in said section mentioned, and to take steps to foreclose any mortgage or liens of the United States on any such railroad property.

And the complainants further state that in pursuance of the acts aforesaid, the said Union Pacific Railroad Company, in the year 1865, determined to make and execute its bonds in the sum of one thousand dollars each, and payable in thirty years after the date thereof, with interest payable semi-annually, at the rate of six per centum per annum from date, to an amount equal to but not exceeding per mile the amount as aforesaid provided to be issued by the Government of the United States to aid in the construction of said railroad, and to secure the same by a first mortgage upon said line of railroad and telegraph, and in pursuance of said determination said railroad company issued its bonds of the form, tenor and date aforesaid, and to secure the same the said Union Pacific Railroad Company determined to make, execute and deliver, and did

make, execute and deliver a mortgage to Edwin D. Morgan and Oakes Ames, as trustees, both of whom have since departed this life, and there have been substituted in place of said trustees in pursuance of law and are now acting as such, the defendant- F. Gordon Dexter and Oliver Ames, Second, and by said mortgage said Union Pacific Railroad Company conveyed to said trustees, all and singular said railroad and telegraph line and all its real and personal
14 estate, franchises and property then owned or that thereafter might be acquired by said railroad company necessary to said railroad and telegraph line so running and operating the same.

And the complainants further state that they are informed and believe that the said railroad company, at the time of the execution of the said mortgage, did issue and since has issued, negotiated, sold and delivered said mortgage bonds to the total amount of twenty-seven million, two hundred and twenty-nine thousand dollars ($27,229,000), of which the principal sum of six million, four hundred and seventy-five thousand dollars ($6,475,000), which matured on January 1st, 1896, and one million, five hundred and ninety-eight thousand dollars ($1,598,000), which matured on January 1st, 1897, are in default, together with interest on the entire amount of said bonds accrued since July 1st, 1896; and that the holders of said bonds and the said trustees claim that under and in pursuance of the provisions of law hereinbefore recited and stated, said mortgage takes precedence of and is superior to the said subsidy lien of the United States of America, and that said mortgage securing said bonds is the first lien and incumbrance upon said premises and railroad property, and each and every part thereof.

And the complainants further state that subordinate only to the lien of any first mortgage given by said company in conformity with the provisions of the tenth and eleventh sections of the said act approved July 2, 1864, the subsidy lien created by the laws aforesaid and taking effect *ipso facto* upon the issue of said subsidy bonds, is the first lien and incumbrance upon all of said railroad property and appurtenances in favor of these complainants.

And the complainants further state that, beginning February 1st, 1866, under and in pursuance of the laws aforesaid, there were issued and delivered by the Secretary of the Treasury, to the said company, bonds of the United States of the tenor and effect described in said acts approved July 1st, 1862, and July 2, 1864, to the total amount of twenty-seven million, two hundred and thirty-six thousand, five hundred and twelve dollars ($27,236,512), the issue of which bonds and delivery to the company did, by force of law, *ipso facto*, constitute a first mortgage (except only as subordinated by said last-mentioned act to the lien of the first-mortgage bonds issued by the company as aforesaid), on the whole line of the railroad and telegraph line, together with the equipment, fixtures and property of every kind and description, a list of which bonds so issued and delivered to the said company, stating the date of issue, the commence-
15 ment of interest, the amount of each delivery and the maturity of the bonds, is hereto annexed, marked Exhibit A, and is thus made a part of this bill of complaint, and complainants

aver that the statements of said exhibit are true and pray that the same may be taken as part of this bill of complaint as if fully averred and stated herein instead of by exhibit.

And the complainants further state that at or about the time of their issue, all of said subsidy lien bonds were sold by the said company and are now outstanding, except as far as paid by the United States, and are wholly unpaid, except that the interest thereon has, so far as the same has matured, been paid by the United States of America, and that the principal of all of said bonds which have matured until the date of the filing of this bill, has been paid by the said United States only, that no part of the cost or expense of said payment has been contributed by the said company, and no payment has been made or security given on account of the principal of said subsidy bonds by the said company, other than as may be held to have been accomplished through the agency of the sinking fund hereinafter described, and that the Secretary of the Treasury has required said company to redeem said bonds so far as the same have accrued and grown due, but with said demand the said company has refused and failed to comply.

And the complainants further aver that by an act of Congress, approved February 24th, 1871, entitled—

"An act to authorize the Union Pacific Railroad Company to issue its bonds to construct a bridge across the Missouri river at Omaha, Nebraska, and Council Bluffs, Iowa,"

it was enacted that for the more perfect connection of any railroads that are or shall be constructed to the Missouri river, at or near Council Bluffs, Iowa, and Omaha, Nebraska, the Union Pacific Railroad Company should be and it was thereby authorized to issue such bonds and to secure the same by mortgage on the bridge and approaches and appurtenances as it might deem needful to construct and to maintain the bridge over such river and the tracks and depots required to perfect the same as then authorized by law of Congress, and that said bridge might be so constructed as to provide for the passage of ordinary vehicles and travel, and said company might collect tolls and charges for the use of the same, and that for the use and protection of said bridge and property the Union Pacific Railroad Company should be empowered, governed and limited by the provisions of the act entitled—

"An act to authorize the construction of certain bridges and to establish them as post-roads, approved July 25th, 1866,"

16 so far as the same is applicable, provided that nothing in said act should be so construed as to change the eastern terminus of the Union Pacific Railroad Company from the place where it was then fixed under existing laws, nor to release said Union Pacific Railroad Company or its successors from its obligation as established by existing laws, provided further that Congress should, at all times, have power to regulate said bridge, and the rates for transportation of freight and passengers over the same, and the local travel in said act provided for, and that the amount of bonds by said act author-

ized should not exceed two and one-half million dollars; provided further that if said bridge should be constructed as a draw-bridge, the same should be constructed with spans of not less than two hundred feet in length to the clear on each side of the central or pivot pier of the drawer.

And complainants aver that said bridge was built from Council Bluffs to Omaha, as part of said Union Pacific railroad, under and by virtue of the authority of the acts approved July 1, 1862, and July 2d, 1864, and of the aforesaid act approved February 24th, 1871, and that mortgage bonds were issued as described in said act approved February 24th, 1871, which the defendants J. Pierpont Morgan and Elisha Atkins, as trustees, and the Central Trust Company, claim to be a lien or incumbrance upon said bridge.

And these complainants further state that in compliance with the mandate of law, and by force of the agencies provided for that purpose by the said laws of the United States, in addition to the sinking fund hereinafter described, large sums of money have been received by the United States and credited to the company towards and in partial reimbursement of the interest paid by the United States as aforesaid, and complainants hereto annex, marking the same "Exhibit B," and pray that it may be taken as part of this bill of complaint, as if fully recited and averred herein, and not by way of exhibit, a true statement of all the interest paid by the United States on the said bonds issued in pursuance of said acts to the Union Pacific Railroad Company, and of all the sums so received by the United States, showing also the balance of interest due to the United States on said account at the date of the filing of this bill, being the net sum of twenty-nine millions, nine hundred and sixty-four thousand, six hundred and sixty-six $\frac{39}{100}$ ($29,964,666.39) dollars.

And the complainants further aver that under and in pursuance of the provisions of the act approved May 7th, 1878, there have been received in the Treasury of the United States, and invested
17 by the Secretary of the Treasury, large sums of money by way of sinking fund for the security of the United States in its said payments and liability to pay said bonds and interest, in addition to the *ipso facto* mortgage described in said acts of July 1st, 1862, and July 2d, 1864.

A true statement of the said sinking fund to the date of filing of this bill containing particulars of the amounts received into said sinking fund and the amounts invested, and the securities and cash in which the same is now held by the Treasury Department of the United States for the purposes aforesaid is hereto attached, marked Exhibit C, and complainants pray that the same may be taken and held to be part of this bill, with the same force and effect as if it were fully recited herein and not by way of exhibit.

And complainants further aver that of the said unpaid bonds so issued under the said acts approved July 1st, 1862 and July 2d, 1864, the whole amount will accrue and grow due by the United States to the holders of the said bonds at the respective dates of future maturity, as follows: On the first day of January, 1898, to the amount of fifteen millions, nine hundred and nineteen thou-

sand, five hundred and twelve dollars ($15,919,512), and on the first day of January, 1899, to the amount of three millions, one hundred and fifty-seven thousand dollars ($3,157,000), and that all other amounts of principal have matured and been paid by the United States as follows, to wit: on the first day of February, 1896, to the amount of four millions, three hundred and twenty thousand dollars ($4,320,000), and on the first day of January, 1897, to the amount of three millions, eight hundred and forty thousand dollars ($3,840,000), which two last-named sums together with the balance of interest as aforesaid, are now due to the United States of America, and that the value of the securities in the sinking fund aforesaid is not sufficient for their reimbursement and payment, and that the United States of America have no other remedy for the payment of the residue remaining due after applying the said sinking fund upon said past-due principal and interest other than the railway and equipment aforesaid, with their appurtenances, and that the amounts to become due hereafter, and the interest thereon, are wholly unsecured, except as aforesaid.

And the complainants furtlier aver that heretofore, and on the 13th day of October, 1893, in a suit in equity brought in this court by said Oliver Ames, and Samuel Carr, executors of the last will and testament of Frederick L. Ames, deceased, and Peter B. Wyckoff and Edward F. Atkins, complainants, against the Union
18 Pacific Railway Company and others, for relief, including the appointment of receivers of said railway and appurtenances, S. H. H. Clark, Oliver W. Mink and E. Ellery Anderson were, in accordance with the prayer of said bill, appointed receivers by this court of said defendant, The Union Pacific Railway Company, and of all the said railroad, equipment and assets described in said bill, for a more full and detailed description of which reference is now had and made to the said order appointing the receivers of record in said cause in this court.

And complainants aver that afterwards on the 13th day of November, 1893, upon the petition of the Attorney General of the United States and by the assent of the complainants and defendants said cause, it was ordered, adjudged and decreed that John W. Doane and Frederic R. Coudert should be, and they were thereby appointed additional receivers of this court of said property.

And these complainants aver that said Clark, Mink, Anderson, Coudert and Doane, so appointed as such receivers, duly qualified and entered upon the performance of their duties, and took possession of all said property and are in possession thereof, subject to the qualifications hereinafter stated and are in control of the same, subject to the orders of this court.

And complainants further aver that on the 21st day of January, 1895, a bill in chancery was filed in this court, by the said F. Gordon Dexter and Oliver Ames, trustees, against the Union Pacific Railway Company, the United States of America, and others, setting up and averring the execution, delivery and outstanding character of the said mortgage hereinbefore described originally

made to the said Edwin D. Morgan and Oakes Ames, as trustees, and of which the said F. Gordon Dexter and Oliver Ames, now claim to be trustees in succession as aforesaid, and the execution, negotiation and sale of bonds under the same as aforesaid, and their outstanding character, and that certain interest on the said bonds was unpaid and *are* in default, and thereby the said complainants Dexter and Ames claim superiority in lien to the lien of the United States and that the said bonds and mortgage were and are in default, and they were and are entitled to foreclose and sell said property free and clear of all claims, liens and incumbrances whatever and out of the proceeds to be reimbursed for the benefit of the said bondholders in the money due and to become due upon the said bonds and secured by said mortgage.

And complainants aver that the said Dexter and Ames, trustees, as such complainants, made the United States of America
19 defendants to said bill of complaint, but that the said United States of America have not appeared and are not parties to said cause, and have taken no part in the prosecution thereof: that the said bill is pending in this court against the other parties thereto, and is wholly undetermined; that by orders of this court said receivership has been extended to said cause, with the same force and effect as if said receivers had been originally appointed therein.

And the complainants aver that the defendant, Union Trust Company of New York, is a corporation organized under the laws of the State of New York; that said company as trustee has, or claims to have, some lien upon or interest in the property, or some part of the property, described aforesaid, and upon which the said *ipso facto* mortgage to the United States of America rests and is charged by force of the issue of said subsidy lien bonds, the same arising out of a certain mortgage made by the said Union Pacific Railway Company to said Union Trust Company as trustee, dated on the 18th day of December, 1873, and known as the sinking fund indenture of the said Union Pacific Railroad Company; that the defendant J. Pierpont Morgan and the defendant Edwin F. Atkins as trustees have, or claim to have, some lien upon or interest in some part of the property embraced in and covered by the said *ipso facto* mortgage in favor of the United States of America, securing the reimbursement to the United States of the payment of (*of*) said subsidy bonds aforesaid, the same arising out of a certain mortgage or deed of trust made by the Union Pacific Railroad Company to J. Edgar Thomson (deceased), and to said J. Pierpont Morgan and Elisha Atkins, as trustees, dated on the first day of April, 1871, and known as the Omaha Bridge mortgage, and arising out of an agreement between the Union Pacific Railroad Company and said Thomson, Morgan and Atkins, dated on the 27th day of December, 1871, and known as the supplemental Omaha Bridge mortgage.

That the defendant The Central Trust Company of New York is a corporation organized and existing under the laws of the State of New York, and that said Central Trust Company has or claims some lien upon or interest in a part of the property embraced within said *ipso facto* mortgage in favor of the United States of America,

securing the reimbursement to the United States of the payment of said subsidy bonds aforesaid, the same arising out of a certain mortgage or deed of trust made by the Union Pacific Railway Company to the Central Trust Company of New York, as trustee, dated on the first day of October, 1885, and known as the Omaha Bridge renewal mortgage, or otherwise.

Wherefore and in consideration of the premises and that
20 the United States of America, complainants, are remediless at law and entitled to relief in equity, come the United States of America and pray as follows:

First. That the Union Pacific Railway Company, F. Gordon Dexter and Oliver Ames, as trustees, Union Trust Company of New York, as trustee, J. Pierpont Morgan and Edwin F. Atkins, as trustees, and the Central Trust Company of New York, as trustee, and E. Ellery Anderson, S. H. H. Clark, Oliver W. Mink, Frederick R. Coudert and John W. Doane, as receivers as aforesaid, be made defendants, and process of subpœna be issued against and served upon them, or that otherwise according to law and the rules of this court, they be notified to appear as defendants hereto and required to answer in the premises all and singular the averments of this bill of complaint.

Second. That the equities arising upon the facts aforesaid between the United States of America and the said several defendants be ascertained by decree of this court, and that for the purposes of relief it be ascertained, adjudged and decreed what are the several priorities of lien upon the said property in favor of the said several parties, and how much money will become and grow due at and after the date of said decree to the said several lienholders in their order of preference, and after giving all proper credits and charging all proper debits to each of the said several parties.

Third. That the lien of the United States be adjudged to be in its proper order a lawful incumbrance and claim upon all the premises, property and franchises owned originally by the said Union Pacific Railroad Company, and now owned and controlled by the said Union Pacific Railway Com- (*in possession of said receivers and subject to the*) pany, and order of this court.

Fourth. That in ascertaining the priorities of the several parties, it shall be determined by the court which of the same, if any, have and enjoy liens and incumbrances prior in lien upon any part, and if any, upon what part of the said premises and property, to the lien of the United States, and that provision be made for protecting the said prior lien if any be ascertained and for determining to what extent and for what amount, if any, the same is entitled to claim and enjoy rights and privileges superior to or not enjoyed by the United States of America, so that at any sale to be made, it may be known and clearly appear subject to the payment of what sum or sums of money, if any, said premises and franchises are to be sold.

Fifth. That through the agency of a master in chancery or otherwise, a true and accurate description be made of all the prop-
21 erty of said Union Pacific railway subject to the said subsidy or *ipso facto* lien of the United States and liable to be sold to

reimburse the said United States of America in the sums due and to become due to it as aforesaid.

Sixth. That the value of the said sinking fund be ascertained, and that provision be made for the sale and reduction thereof to money and its application as a credit upon said debt of said railway company to the United States at the proper dates and times of credit.

Seventh. That upon the non-payment within a reasonable time to be fixed by the court, of the amount which may be ascertained by the decree of this court to be due and owing to the United States of America after giving all proper credits as aforesaid, with interest, said *ipso facto* or subsidy lien mortgage and all statutory rights and claims of the United States may be foreclosed and the premises and franchises embraced therein sold, free and discharged from all claims of all parties to this cause, except such, if any, as may be found to be prior in lien and incumbrance to the subsidy lien of the United States of America, aforesaid, and that the proceeds of said sale may be paid into the Treasury of the United States to the credit of said company, on account of said amount of said bonds and interest due and to become due, for which said railroad is bound to reimburse the complainants as aforesaid.

Eighth. That receivers of said railroad property, equipment, and franchises be appointed, or that the existing receivership be extended to this cause, for the protection and preservation of the interests of all parties hereto.

Ninth. And that the complainants may have such other and further relief as in equity and good conscience they shall appear to be entitled to.

JUDSON HARMON,
Attorney General of the United States.
GEO. HOADLY,
Special Assistant to the Attorney General in the Matter of the Union Pacific Railway Company.
JOHN C. COWIN,
Special Counsel for the United States.

22

EXHIBIT A.

Statement Showing to Whom Delivered, the Dates of Issue, Maturity, &c.

Union Pacific Railroad Company.

Maturity of bond.	Date of issue.	To whom delivered.	Commencement of interest.	Amount.	Total.
February 1, 1896	Feb. 1, 1866	.....	Feb. 1, 1866	$640,000	
	May 7, 1866	.....	May 7, 1866	400,000	
	June 26, 1866	.....	June 26, 1866	640,000	
	July 13, 1866	.....	July 13, 1866	320,000	
	Aug. 9, 1866	.....	Aug. 9, 1866	560,000	
	Sept. 11, 1866	.....	Sept. 11, 1866	720,000	
	Oct. 15, 1866	.....	Oct. 13, 1866	560,000	
	Nov. 8, 1866	.....	Nov. 7, 1866	480,000	
January 1, 1897	Jan. 9, 1867	.....	Jan. 8, 1867	560,000	
	June 11, 1867	.....	June 10, 1867	640,000	
	July 6, 1867	.....	July 6, 1867	640,000	
	Aug. 29, 1867	.....	Aug. 29, 1867	560,000	
	Oct. 2, 1867	.....	Oct. 2, 1867	560,000	
	Nov. 5, 1867	.....	Nov. 5, 1867	560,000	
	Dec. 13, 1867	.....	Dec. 13, 1867	320,000	
January 1, 1898	Jan. 28, 1868	.....	Jan. 27, 1868	957,000	
	May 18, 1868	.....	May 16, 1868	960,000	
	May 19, 1868	.....	May 18, 1868	960,000	
	June 12, 1868	.....	June 12, 1868	960,000	
	June 17, 1868	.....	June 18, 1868	960,000	
	July 23, 1868	.....	July 22, 1868	960,000	
	July 25, 1868	.....	July 24, 1868	1,841,000	
	Aug. 12, 1868	.....	Aug. 11, 1868	640,000	
	Aug. 29, 1868	.....	Aug. 28, 1868	640,000	
	Sept. 7, 1868	.....	Sept. 7, 1868	1,280,000	
	Sept. 23, 1868	.....	Sept. 23, 1868	640,000	
	Oct. 22, 1868	.....	Oct. 21, 1868	640,000	
	Nov. 20, 1868	.....	Nov. 19, 1868	640,000	
23					
January 1, 1898	Dec. 7, 1868	.....	Dec. 7, 1868	1,280,000	
	Dec. 15, 1868	.....	Dec. 14, 1868	640,000	
	Dec. 17, 1868	.....	Dec. 16, 1868	640,000	
	Dec. 24, 1868	.....	Dec. 23, 1868	640,000	
	Dec. 24, 1868	.....	Dec. 24, 1868	640,000	
	July 15, 1870	.....	Nov. 21, 1868	1,512	
January 1, 1899	Jan. 29, 1869	.....	Jan. 29, 1869	640,000	
	Feb. 10, 1869	.....	Feb. 10, 1869	1,280,000	
	July 22, 1869	.....	July 16, 1869	640,000	
	Nov. 10, 1869	.....	July 16, 1869	437,000	
	July 14, 1870	.....	July 16, 1869	160,000	
Total.....	.....	.....	.....	.....	$27,236,512

Exhibit B.

Statement Showing Interest Paid by the United States on Bonds Issued to the Union Pacific Railway Company.

Interest repaid by the company and balance of interest due the United States.

		Interest paid by the United States.	Six months' period ending.	Reimbursed by railroad company.		Balance of interest paid by the United States not reimbursed each six months.	Reimbursed in excess of interest paid by the United States each six months.	Total balance of interest paid not reimbursed.
				By ½ transportation, each 6 months ending.	By 5 % net earnings.			
Total amount of bonds issued, $27,236,512.	July 1, 1866	19,917 09	.....	.....	.....	19,917 09	.....	19,917 09
	January 1, 1867	97,755 65	.....	.....	.....	97,755 65	.....	117,672 74
	July, "	147,826 87	Dec. 31, 1867	249,191 98	.....	.....	101,365 11	16,307 63
	January, 1868	210,562 28	June 30, 1868	275,661 05	.....	.....	65,098 77	*48,791 14*
	July, "	288,593 86	Dec. 31, "	194,361 84	.....	94,232 02	.....	45,440 88
	January, 1869	549,109 77	June 30, 1869	187,231 24	.....	361,878 53	.....	407,319 41
	July, "	768,104 37	Dec. 31, "	200,981 43	.....	567,122 94	.....	974,442 35
	January, 1870	809,859 96	June 30, 1870	141,149 33	.....	627,710 63	.....	1,602,152 98
	July, "	821,641 20	Dec. 31, "	145,375 46	.....	676,265 74	.....	2,278,418 72
	January, 1871	817,095 36	June 30, 1871	320,350 82	.....	496,744 54	.....	2,775,163 26
	July, "	817,095 36	Dec. 31, "	209,130 82	.....	607,964 54	.....	3,383,127 80
	January, 1872	817,095 36	June 30, 1872	217,139 35	.....	599,956 01	.....	3,983,083 81
	July, "	817,095 36	Dec. 31, "	115,302 58	.....	701,792 78	.....	4,684,876 59
	January, 1873	817,095 36	June 30, 1873	86,143 77	.....	730,951 59	.....	5,415,828 18
	July, "	817,095 36	Dec. 31, "	228,459 67	.....	588,635 69	.....	6,004,463 87
	January, 1874	817,095 36	June 30, 1874	204,694 76	.....	612,400 60	.....	6,616,864 47
	July, "	817,095 36	Dec. 31, "	243,981 38	.....	573,113 98	.....	7,189,978 45
	January, 1875	817,095 36	June 30, 1875	444,670 66	.....	372,424 70	.....	7,562,403 15
	July, "	817,095 36	Dec. 31, "	438,889 51	.....	378,205 85	.....	7,940,609 00
	January, 1876	817,095 36	June 30, 1876	135,989 12	.....	681,106 24	.....	8,621,715 24

January, 1876	817,095 36	June 30, 1876	135,989 12	.....	681,106 24	.....	8,621,715 24
July, "	817,095 36	Dec. 31, "	47,166 75	.....	769,928 61	.....	9,391,643 85
January, 1877	817,095 36	June 30, 1877	660,170 15	.....	156,925 21	.....	9,548,569 06
July, "	817,095 36	Dec. 31, "	347,062 17	.....	470,033 19	.....	10,018,602 25
January, 1878	817,095 36	June 30, 1878	718,767 11	.....	98,328 25	.....	10,116,930 50
July, "	817,095 36	Dec. 31, "	292,343 91	.....	524,751 45	.....	10,641,681 95
January, 1879	817,095 36	June 30, 1879	1,172,843 52	.....	.....	355,748 16	10,285,933 79
July, "	817,095 36	Dec. 31, "	96,268 48	.....	720,826 88	.....	11,006,760 67
January, 1880	817,095 36	June 30, 1880	390,157 51	.....	427,937 85	.....	11,433,698 52
July, "	817,095 36	Dec. 31, "	188,452 45	.....	628,642 91	.....	12,062,341 43
January, 1881	817,095 36	June 30, 1881	142,941 74	.....	674,153 62	.....	12,736,495 05
July, "	817,095 36	Dec. 31, "	91,416 14	.....	725,679 22	.....	13,462,174 27
January, 1882	817,095 36	June 30, 1882	226,242 90	.....	590,852 46	.....	14,053,026 73
July, "	817,095 36	Dec. 31, "	362,451 25	.....	454,644 11	.....	14,507,670 84
January, 1883	817,095 36	June 30, 1883	117,304 02	.....	699,791 34	.....	15,207,462 18
July, "	817,095 36	Dec. 31, "	588,845 95	.....	228,249 41	.....	15,425,711 59
January, 1884	817,095 36	June 30, 1884	483,968 97	.....	333,126 39	.....	15,768,837 98
July, "	817,095 36	Dec. 31, "	489,741 82	.....	327,353 54	.....	16,096,191 52
January, 1885	817,095 36	June 30, 1885	151,729 75	283,162 99	382,202 62	.....	16,478,394 14
July, "	817,095 36	Dec. 31, "	182,820 83	.....	634,274 53	.....	17,112,668 67
January, 1886	817,095 36	June 30, 1886	167,228 71	.....	649,866 65	.....	17,762,535 32
July, "	817,095 36	Dec. 31, "	178,203 56	155,246 59	483,645 21	.....	18,246,180 53
January, 1887	817,095 36	June 30, 1887	195,069 94	.....	622,025 42	.....	18,868,205 95
July, "	817,095 36	Dec. 31, "	152,930 30	.....	664,165 06	.....	19,532,371 01
January, 1888	817,095 36	June 30, 1888	193,944 26	.....	623,151 10	.....	20,155,522 11
July, "	817,095 36	Dec. 31, "	130,593 53	.....	686,501 83	.....	20,842,023 94
January, 1889	817,095 36	June 30, 1889	144,984 85	.....	672,110 51	.....	21,514,134 45
July, "	817,095 36	Dec. 31, "	188,326 72	.....	628,768 64	.....	22,142,903 09
January, 1890	817,095 36	June 30, 1890	164,677 16	.....	652,418 20	.....	22,795,321 29
July, "	817,095 36	Dec. 31, "	214,741 17	.....	602,354 19	.....	23,397,675 48
January, 1891	817,095 36	June 30, 1891	240,850 47	.....	576,244 89	.....	23,973,920 37
July, "	817,095 36	Dec. 31, "	214,590 09	.....	602,505 27	.....	24,576,425 64
January, 1892	817,095 36	June 30, 1892	266,350 11	.....	550,745 25	.....	25,127,170 89
July, "	817,095 36	Dec. 31, "	284,751 66	.....	532,343 70	.....	25,659,514 59
January, 1893	817,095 36	June 30, 1893	245,511 58	.....	571,583 78	.....	26,231,098 37
July, "	817,095 36	Dec. 31, "	233,889 23	.....	583,206 13	.....	26,814,304 50
January, 1894	817,095 36	June 30, 1894	268,039 31	.....	549,056 05	.....	27,363,360 55

Exhibit B—Continued.

		Interest paid by the United States.	Six months' period ending.	Reimbursed by railroad company.		Balance of interest paid by the United States not reimbursed each six months.	Reimbursed in excess of interest paid by the United States each six months.	Total balance of interest paid not reimbursed.
				By 4 transportation, each 6 months ending.	By 5 % net earnings.			
	July, "	817,095 36	Dec. 31, "	271,476 48	.....	545,618 88	.....	27,908,979 43
	January 1, 1895	817,095 36	June 30, 1895	270,761 10	.....	546,334 26	.....	28,455,313 69
	July 1, "	817,095 36	Dec. 31, "	280,606 38	.....	536,488 98	.....	28,991,802 67
	Jan'y 1, 1896	817,095 36						
	Feb. 1, 1896	22,014 25	June 30, 1896	271,421 40	.....	567,688 21	.....	29,559,490 88
	July 1, 1896	687,495 36	Dec. 31, 1896	282,319 85	.....	405,175 51	.....	29,964,666 39

26 EXHIBIT "C."

Statement of Bonds in Sinking Fund of the Union Pacific Railroad January 16, 1897.

	Not due.	Due but unpaid.*
U. S. bonds 5% of 1904	$915,750	
" " 6% " 1898	523,000	
" " 6% " 1899	41,000	
First-mortgage bonds:		
Union Pacific due Jan'y 1, 1896		$929,000
" " " " 1, 1897		350,000
" " " July 1, "	473,000	
" " " Jan'y 1, 1898	1,534,000	
" " " July 1, "	2,536,000	
" " " Jan'y 1, 1899	545,000	
Central " " Jan'y 1, 1898	2,229,000	
Kansas " " Aug. 1, 1895		549,000
" " " June 1, 1896		929,000
Sioux City & Pacific " Jan'y 1, 1898	716,500	
Central branch " May 1, 1895		1,025,000
Western Pacific " July 1, 1899	350,000	
	9,863,250	3,782,000
Total bonds in fund		$13,645,250

* Bonds due but unpaid held by assistant treasurer U. S., New York.

Office of Treasurer U. S., January 16, 1897.

Uninvested cash in said sinking fund, including $1,011,000 principal of matured Pacific bonds (currency sixes), paid by the United States, $3,608,809.99.

Indorsed: Filed Jan'y 23rd, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 22nd day of March, 1897, separate answer of the Union Pacific Railway Company was filed in said case, which said separate answer is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

THE UNITED STATES OF AMERICA, Complainants,
against
THE UNION PACIFIC RAILWAY COMPANY, S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON; FREDERIC R. COUDERT and JOHN W. DOANE, Receivers; F. GORDON DEXTER and OLIVER AMES, Trustees; UNION TRUST COMPANY OF NEW YORK, Trustee; J. PIERPONT MORGAN and EDWIN F. ATKINS, Trustees; CENTRAL TRUST COMPANY OF NEW YORK, Trustee, Defendants.

Separate Answer of the Union Pacific Railway Company to the Bill of Complaint of the United States of America.

This defendant, The Union Pacific Railway Company, saving and reserving to itself all manner of benefit or advantage of
27 exception which can or may be had or taken to the said bill of complaint, for answer thereunto says:

First. It admits that the Union Pacific Railroad Company was a corporation created by and existing under the certain laws of the United States, to wit, an act of the Congress entitled, "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July 1, 1862, and also an act of the Congress amendatory thereof, approved July 2, 1864, and other acts of the Congress amendatory thereof and supplementary thereto.

Second. It further admits that the said The Union Pacific Railway Company as now existing was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in said several acts of the Congress of the United States by a consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, all of which three companies were named and described in the acts of Congress aforesaid; and that said The Union Pacific Railway Company, so created by said consolidation, thereupon became the successor to each and all of said constituent companies, and thereby became vested with all of the rights, title, interests, properties and franchies of each and all of said constituent companies.

Third. It admits its insolvency as alleged in the complaint, and that its property is possessed by and in the hands of receivers as stated in the bill of complaint. It avers that its general office is in the city of Boston, Massachusetts, but it admits that it has its principal operating office in the city of Omaha, in the State and district of Nebraska.

Fourth. Answering all those portions of the bill of complaint herein which purport to set forth the terms and effect of certain acts of the Congress of the United States in said bill mentioned and referred to, this defendant refers to said acts of Congress themselves for the full terms and provisions thereof, and denies any statement

of the purport or effect thereof which shall be found to be inconsistent with the terms of said acts.

Fifth. This defendant admits that on the 17th day of November, 1863, and on the 7th day of March, 1864, the President of the United States, by executive orders of those dates respectively, fixed the eastern terminus of the Union Pacific railroad on the Iowa bank
28 of the Missouri river, "at a point on the western boundary of Iowa, east of and opposite to the east line of section ten in township fifteen north of range 13 east of the sixth principal meridian, in the Territory of Nebraska."

Sixth. This defendant admits that, under and in pursuance of the acts of Congress approved July 1, 1862, and July, 2, 1864, and other acts amendatory thereof and supplementary thereto, the said The Union Pacific Railroad Company, in accordance with said acts, built and completed a railroad and telegraph line on the most direct and practicable route and approved by the President of the United States, and equipped the same with rolling stock from its said eastern terminus, through the States of Nebraska, Wyoming and Colorado to the western terminus, at a connection or junction with the Central Pacific railroad, at a point about five miles west of Ogden, in the then Territory but now State of Utah, a distance of about 1,042.93 miles, more or less, including a bridge over the Missouri river between Council Bluffs in the State of Iowa and Omaha in the State of Nebraska, aforesaid, and the said Union Pacific Railroad Company, and thereafter its successor the Union Pacific Railway Company, remained in possession thereof and operated the same under said authority until the appointment of receivers, as in said bill of complaint alleged.

Seventh. This defendant further admits that in pursuance of the acts aforesaid, the said Union Pacific Railroad Company determined in the year 1865 to make and execute its bonds in the sum of one thousand dollars each, payable in thirty years after the date thereof, with interest payable semi-annually at the rate of six per centum per annum from date, to an amount equal, but not exceeding the amount per mile provided to be issued by the acts of the Congress of the United States to aid in the construction of the said railroad, and to secure the same by a first mortgage upon said line of railroad and telegraph, and in pursuance of said determination said railroad company issued its bonds of the form, tenor and date aforesaid, and to secure the same said Union Pacific Railroad Company determined to make, execute and deliver and did make, execute and deliver a mortgage to Edwin D. Morgan and Oakes Ames as trustees, both of whom have since departed this life, and there have been substituted in the place of said trustees in pursuance of law, and are now acting as such, the said defendants F. Gordon Dexter and Oliver Ames, 2d, and by said mortgage the said Union Pacific Railroad Company conveyed to said trustees all and singular the said railroad and telegraph line and all its real and personal estate, franchises and properties they owned, or that might thereafter be acquired, by
29 said railroad company necessary to said railroad and telegraph line or the running and operation of the same.

This defendant further admits that said railroad company did, after the execution of the said mortgage, issue, negotiate, sell and deliver its said mortgage bonds of the total amount of $27,229,000, of which the principal sums of $6,475,000 matured on January 1, 1896, and $1,598,000 matured on January 1, 1897, are in default, but it avers the truth to be that the interest on the entire amount of said bonds has been fully paid, as far as the same has been requested, to the 1st day of January, 1897.

It further admits that the holders of said bonds and the trustees of the said mortgage claim that under and in pursuance of the provisions of law in said bill recited and stated said mortgage takes precedence of and is superior to the said subsidy lien of the United States of America, and also claim that said mortgage securing said bonds is a first lien and encumbrance upon said premises and railroad property, and each and every part thereof.

Eighth. This defendant, further answering in respect of the issuance and delivery by the Secretary of the Treasury of the United States to said Union Pacific Railroad Company of the bonds of the United States of the tenor and effect described in said acts approved July 1, 1862, and July 2, 1864, to the total amount of $27,236,512, admits that the allegations of fact of said bill in that behalf are true.

Ninth. And this defendant further answering admits that at or about the time of their issue to the said railroad company all of the said subsidy lien bonds so issued by the Secretary of the Treasury were sold and delivered by the said The Union Pacific Railroad Company and are now outstanding, except so far as such bonds have been paid by the United States, and that said bonds are wholly unpaid by the said railroad company or by the defendant company, except that the interest thereon has, so far as the same has heretofore matured, been paid by the United States of America, and that the principal of the said subsidy bonds which has matured until the date of the filing of complainant's bill has been paid by said United States only, and that no part of the cost or expense of such payment has been contributed by said company, and it further admits that no payment has been made or additional security given on account of the principal of said subsidy bonds by said company other than as may be held to have been accomplished through the agency of the sinking fund in complainant's bill described, and it submits, also excepting the security or payments on account of principal or interest resulting from the operation of said acts of Congress in said bill referred to.

Tenth. This defendant admits that the bridge from Council Bluffs to Omaha was built as part of the Union Pacific railroad under and by virtue of the authority of the acts approved July 1, 1862, July 2, 1864, and February 24, 1871, and that mortgage bonds were issued as described in said act approved February 24, 1871, which the defendants, J. Pierpont Morgan and Elisha Atkins, as trustees, and the Central Trust Company of New York, as trustee, claim to be liens or encumbrances upon said bridge as stated in the bill of com-

plaint; and this defendant avers that the construction of the said bridge was completed in or about the month of March, 1872

Eleventh. This defendant further answering admits that, in accordance with the requirements of those provisions of the laws of the United States referred to in complainant's bill and those enactments of Congress made since the passage of said laws of 1862 and 1864 in addition to the sinking fund in said complainant's bill mentioned, large sums of money have been received by the United States and credited to this defendant company towards and in partial reimbursement of the bonds and interest paid by the United States as aforesaid; but this defendant, on information and belief, denies that "Exhibit B," attached to the bill of complaint herein, contains a true statement of all the interest paid by the United States, and of the sums paid to and retained by the United States on account of said subsidy bonds and interest, and this defendant prays an account thereof may be taken.

Twelfth. This defendant admits that there have been received in the Treasury of the United States and invested by the Secretary of the Treasury large sums of money by way of sinking fund for the security, among others, of the United States in its payments and liability to pay said subsidy bonds and interest thereon, in addition to the security of the said *ipso facto* mortgage described in said acts of July 1, 1862, and July 2, 1864, but this defendant has no information enabling it to admit or deny the correctness of the statement Exhibit C, and it calls for proof in this behalf.

Thirteenth. This defendant, further answering, admits that of the unpaid subsidy bonds so issued under said acts approved July 1, 1862, and July 2, 1864, the amounts which will hereafter accrue and grow due from the United States to the holders of said bonds is correctly stated in the said complainant's bill as follows: On January 1, 1898, the amount of $15,919,512, and on January 1, 1899,
31 the amount of $3,157,000; and that all other amounts of principal have matured and been paid by the United States as follows, to wit: On the 1st day of February, 1896, the amount of $1,320,000, and on the 1st day of January, 1897, the amount of $3,840,000.

Fourteenth. This defendant admits that on the 13th day of October, 1893, in a certain suit brought in this court by Oliver Ames, Second, and Samuel Carr, executors of the last will and testament of Frederick L. Ames, deceased, and Peter B. Wyckoff and Edwin F. Atkins, complainants, against The Union Pacific Railway Company and others, for relief, including the appointment of receivers of said railway and appurtenances, and of all property, real, personal and mixed, of all kinds and descriptions of the Union Pacific Railway Company wherever situated, S. H. H. Clark, Oliver W. Mink and E. Ellery Anderson were, in accordance with the prayer of said bill, appointed receivers by this court of said defendant, The Union Pacific Railway Company, and of all the said railroad, equipment, properties and assets described in said bill; that this defendant refers thereto and to the order of appointment of said receivers for a more full and detailed description of said property;

and it also admits that afterwards, on the 13th of November, 1893, upon the petition of the Attorney General of the United States, and by assent of the complainants and defendants in said cause, it was ordered, adjudged and decreed that John W. Doane and Frederic R. Coudert should be and they were appointed additional receivers by this court of the railroads and property in said bill and in the orders of said appointment mentioned and described.

This defendant admits that said receivers so appointed as such duly qualified and entered upon the performance of their duties, and, as such, took possession of all of the property, real, personal and mixed, of the said Union Pacific Railway Company in said proceedings mentioned and described, and admits that said persons have continued to be, and now are, in possession of said properties under the orders of court as hereinbefore and hereinafter shown, and this defendant avers that on or about the 16th of July, 1894, and thereafter, in a certain cause pending in the circuit court of the United States for the district of Kansas, wherein Russell Sage and George J. Gould, trustees, were complainants, and The Union Pacific Railway Company and others were defendants, the same persons were appointed receivers of all that portion of the properties of the Union Pacific Railway Company embraced in and covered by a certain mortgage made by the Kansas Pacific Railway Company, dated May 1, 1879, and the said receivers have operated the properties embraced in said mortgage under the provisions of the
32 orders and requirements of said courts, and this defendant prays leave that it may refer as it may hereafter be advised to the said bill, mortgage and the orders of said courts in that behalf; and this defendant admits and avers that afterwards on or about the 19th day of November, 1894, in a certain cause brought in the circuit court of the United States for the districts of Colorado and Wyoming by Russell Sage and George J. Gould, trustees, as complainants, against The Union Pacific Railway Company and others, as defendants, the same persons were appointed receivers of all that portion of the property of the Union Pacific Railway Company embraced by and included in that certain mortgage given by the Denver Pacific Railway and Telegraph Company, and this defendant prays leave to refer to the said bill and mortgage and to the orders and proceedings in said court had in that behalf in respect of the said properties as it may hereafter be advised; and this defendant admits and avers that on the 21st of January, 1895, in a certain cause pending in this court, wherein F. Gordon Dexter and Oliver Ames, Second, trustees, were complainants and The Union Pacific Railway Company and others were defendants, including the United States of America, a bill was filed setting up and averring the execution and delivery and the (*out*) outstanding character of the said mortgage hereinbefore described originally made to the said Morgan and Ames as trustees, and of which the said Dexter and Ames are now trustees by succession, and the execution, negotiation and sale of the bonds under the same as aforesaid, and their outstanding character, and that certain interest on said bonds was then due and in default, and thereby the said Dexter and Ames

claimed a superiority in lien to the lien of the United States, and that the said bonds and mortgage were in default, and that they were entitled to foreclose and sell the said property free and clear of all claims, liens and encumbrances whatever, and out of the proceeds to be reimbursed for the benefit of the said bondholders in the moneys due and to become due upon said bonds and secured by said mortgage, in which said proceeding the said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert were on the said 21st of January, 1895, appointed receivers, and that from thence hitherto said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert have continued in the possession of the property mentioned in the said orders of said courts and have continued to operate the railroads mentioned and described in said last-named bill as receivers of this court, and it prays that it may on hearing hereof show and read any of the said bills, orders, or proceedings in any and all of the said several causes as it may hereafter be advised.

33 This defendant admits that the said Dexter and Ames, trustees, as such complainants, made the United States of America defendants to the said bill of complaint; but it denies that the United States of America have not appeared, and are not parties to said cause, or that they have taken no part in the prosecution thereof, but alleges that since or about the time of the filing of the bill of complaint in this cause the United States of America appeared as defendants in said cause instituted by said Dexter and Ames, trustees, and thereafter duly filed their answer in said cause, in which cause, as this defendant further admits, the bill is pending and undetermined in this court.

Fifteenth. This defendant admits the allegations of the bill of complaint herein relating to the several mortgages to the Union Trust Company of New York, J. Pierpont Morgan and Edwin F. Atkins, and the Central Trust Company of New York, as trustees, respectively, and as to the claims of said trustees as to the rights and priorities of their said several mortgages.

This defendant avers that the Union Pacific Railroad Company, in order to construct and equip its road as required by the aforesaid acts of Congress in that behalf, made, executed and delivered under date of November 1st, 1865, its said first mortgage to Edwin D. Morgan and Oakes Ames, trustees, the same hereinbefore referred to.

For the same purposes the said Union Pacific Railroad Company made, executed and delivered, under date of April 16th, 1867, to Cyrus H. McCormick and John Duff, as trustees, a mortgage on all lands granted to the said Union Pacific Railroad Company by an act of Congress approved July 1, 1862, and the amendatory act approved July 2, 1864, to secure its bonds to an amount not exceeding $10,000 per mile for each mile of the said railroad, and there were issued and sold by the said company under the said mortgage its bonds to the amount of $10,400,000, all of which have since been retired or provided for.

And for like purposes said Union Pacific Railroad Company afterwards—to wit, on or about September 1st, 1869—made, executed

and delivered its indenture to John R. Duff, Benjamin E. Bates and F. Gordon Dexter, trustees, to secure an issue of bonds aggregating $10,000,000, payable on the 1st day of September, 1871, or on the 1st days of March or September in either of the years 1871, 1873, or 1874, at the election of the said company, and pledged to the
34 said trustees for the payment of the said issue of bonds all the net earnings of the said railroad, after deducting the payments of interests that should fall due upon the first mortgage of the company and also upon the said land-grant mortgage bonds, but said indenture was not, otherwise than by the said pledge of income, a mortgage upon the railroad or property of the said company.

And for like purposes, as the defendant alleges on information and belief, and for the purpose of paying or retiring the first-mortgage bonds, land-grant bonds, and income bonds hereinbefore recited, the said Union Pacific Railroad Company on the 18th day of December, 1873, executed its mortgage indenture of that date to the Union Trust Company of New York, trustee, conveying to the said trustee, for the purposes aforesaid, and upon the trusts in the said indenture created and declared, to secure an issue of bonds aggregating $16,000,000 (of which there are now outstanding $3,730,000), its railroad as therein described, and all of its appurtenances, and all and singular the lands granted to the said Union Pacific Railroad Company by the said acts of Congress of July 1, 1862, and July 2, 1864, and also all the estate, right, title, interest, claim and demand which the said railroad company then owned or was entitled to or thereafter might acquire, own or become entitled to by force of the said acts of Congress, excepting only such parts and parcels of the said land as had been theretofore sold and conveyed by the said company to purchasers thereof. Defendant states that this last-named mortgage is the mortgage referred to in the bill of complaint as having been made by the Union Pacific Railroad Company to the Union Trust Company of New York, as trustee.

To complete its road and to comply with the requirements of the acts of Congress in that behalf, the said Union Pacific Railroad Company on the 1st day of April, 1871, made, executed and delivered to J. Edgar Thomson, J. Pierpont Morgan and Elisha Atkins, trustees, an indenture of mortgage of that date, commonly known as the Omaha Bridge mortgage, to secure 2,500 bonds of $1,000 each, and mortgaged, to secure the said issue of bonds, all and singular, the said bridge over the Missouri river between Omaha and Council Bluffs, and all approaches thereof, and the appurtenances thereunto belonging, including all parts and portions of the said bridge then constructed or thereafter to be constructed, and the depots at Council Bluffs and Omaha, as will more fully appear, reference being had to the said mortgage; and afterwards the said company made, executed and delivered a supplemental bridge mortgage to
35 the same trustees, dated the 27th day of September, 1871, making further provisions for the security and payment of the said bonds and the interest thereon. Of said bridge mortgages, J. Pierpont Morgan and Edwin F. Atkins are the surviving trus-

tees, and these are the bridge mortgages referred to in the bill of complaint herein.

And afterwards, to wit, on the 1st day of October, 1885, this defendant, as the successor of the Union Pacific Railroad Company, for the purpose of funding and renewing the outstanding bonds secured by said existing bridge mortgages, executed to the Central Trust Company of New York, as trustee, a mortgage securing bonds to an amount which should not exceed $1,250,000. This mortgage is outstanding and unsatisfied, and is the mortgage referred to in the bill of complaint as having been executed by this defendant to the Central Trust Company of New York, as trustee, and embraces the same premises as those embraced and included in the bridge mortgages to the said defendants Morgan and Atkins, trustees.

Defendant avers and shows that in order to adjust, determine and adjudge its equities and those of the other parties in the premises, it is entitled in this cause to have an account taken and stated between it and the complainant in respect of all sums and amounts due from it to the complainant, and from the complainant to this defendant, for transportation services rendered by this defendant to complainant and not credited in the accounts in that behalf set out in the bill of complaint, or otherwise, and that there shall be likewise ascertained, determined and adjudged the amounts severally due from this defendant upon each and all of said mortgages, and the nature, character and extent of the property covered by the lien of the said several mortgages, including the lien of the United States, and the respective ranks and priorities of the said several mortgages, and the lien of the United States.

Sixteenth. This defendant alleges that by reason of its obligation to repay to the United States the amount of the said subsidy bonds issued and delivered as aforesaid by the complainant, together with all interest thereon which shall have been paid by the United States, it is its right to demand, and it does hereby demand, that all the securities held by the complainants, either under the act of July 1st, 1862, or of July 2d, 1864, or of May 7th, 1878, shall be included in the decree to be entered in this suit, to the end that said obligations of this defendant shall either be paid in full or that the largest amount possible be realized towards the payment and discharge of the same, and it submits that it is the duty of this defendant
36 to all holders of liens subsequent to the lien of the United States and to its creditors to demand that all of the said securities shall be so applied.

And this defendant further shows that the securities so held by the United States to secure the repayment to it of the subsidy bonds and interest are as follows:

1. By the fifth section of said act of July 1st, 1862, it is provided that the issue of the said bonds and their delivery to the said company "shall, *ipso facto*, constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which the said bonds may be issued."

That, by the force of said provision, the said railroad and tele-

graph, rolling stock and fixtures and property in consideration of which the said bonds were issued, were mortgaged to the United States as security for the repayment of the said subsidy bonds and of the interest thereon.

That by section 10 of the said act of July 2d, 1864, the lien of the said *ipso facto* mortgage, while subordinated to the lien of certain other bonds in the said section specified, was not altered or affected in respect to the description of the property which was embraced in the said *ipso facto* mortgage.

2. That by the force of the provisions contained in the said acts of July 1, 1862, and of July 2d, 1864, as set forth in the complainant's bill herein, it is provided that certain public lands in said act specified and described shall be granted to the Union Pacific Railroad Company, and that under and in pursuance of such provisions this defendant has acquired title to the said lands, has received the patents of the United States for many of them, and is entitled to obtain the patents of the United States for the remainder of such lands.

That by the fifth section of the said act of July 1st, 1862, it is provided that "on the refusal or failure of said company to redeem said bonds or any part of them when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities and appurtenances thereto belonging, and also all lands granted to said company by the United States which at the time of said default shall remain in the ownership of the said company may be taken possession of by the Secretary of the Treasury for the use and benefit of the United States."

And this defendant alleges that by the force of the said provision the lands so granted, subject to all sales or disposition made
37 of the same by this defendant, or said predecessor company, became in effect mortgaged to the United States as security for the repayment of the said subsidy bonds and interest, and form part of the security now held by the United States as complainant herein for the repayment of said sums of principal and interest.

3. That by the first, second, third, fourth and fifth sections of the act of May 7th, 1878, commonly known as the "Thurman act," there was established in the Treasury of the United States a sinking fund, to be under the control and direction of the Secretary of the Treasury of the United States, but which sinking fund was and remained, until applied to the purposes directed in the said act, the property of this defendant.

That the condition of the said sinking fund was substantially as set forth in the bill of complaint herein, subject to such additions and alterations as may have occurred since the date of the statement relating thereto, as to all of which this defendant will make proof on the hearing of this cause, and that the provisions of law directing the application to be made of the said sinking fund in the said act contained are as follows:

"That the said sinking fund so established and accumulated shall, at the maturity of the said bonds so respectively issued by the United

States, be applied to the payment and satisfaction thereof, according to the interest and proportion of each of said companies in said fund, and of all interest paid by the United States thereon, and not reimbursed, subject to the provisions of the next section.

"That said sinking fund so established and accumulated shall, according to the interest and proportion of said companies respectively therein, be held for the protection, security and benefit of the lawful and just holders of any mortgage or lien debts of such companies respectively, lawfully paramount to the rights of the United States, and for the claims of other creditors, if any, lawfully chargeable upon the funds so required to be paid into said sinking fund, according to their respective lawful priorities, as well as for the United States, according to the principles of equity, to the end that all persons having any claim upon said sinking fund may be entitled thereto in due order, but the provisions of this section shall not operate or be held to impair any existing legal right, except in the manner or in this act provided, of any mortgage, lien or other creditor of any of said companies respectively, nor to excuse any of said companies respectively from the duty of discharging, out of other funds, its debts to any creditor except the United States."

38 And this defendant alleges that the sinking fund so constituted as aforesaid forms part of the security now held by the United States for the repayment and satisfaction, amongst others, of the bonds so issued by the United States and of the interest which may be due thereon.

4. This defendant further shows that the 9th section of the said act of May 7th, 1878, is as follows:

"That all sums due to the United States from any of said companies respectively, whether payable presently or not, and all sums required to be paid to the United States or into the Treasury or into said sinking fund under this act, or under the acts hereinbefore referred to, or otherwise, are hereby declared to be a lien upon the property, estate, rights and franchises of every description granted or conveyed by the United States to any of said companies respectively or jointly, and also upon all the estate and property, real, personal and mixed, assets and income of the said several railroad companies respectively, from whatever source derived, subject to any lawful prior and paramount mortgage lien or claim thereon. But this section shall not be construed to prevent said companies respectively from using and disposing of any of their property or assets in the ordinary, proper and lawful course of their current business, in good faith and for valuable consideration."

And this defendant does not hereby admit that by the force of the said ninth section any lien, right, title or interest whatever was acquired by the United States upon any property, real, personal or mixed, assets or income of this defendant from whatever source derived, and submits all questions which may be raised in relation to such alleged additional lien and interest to this court for its construction, but it does assert that any such lien, estate or interest, if any were acquired, was acquired and held by the United States

solely as additional security for the repayment of the said subsidy bonds, principal and interest.

And this defendant further alleges that after the amount remaining due for principal and for interest upon the subsidy bonds so issued by the United States shall have been ascertained and determined, it is entitled to a provision in the decree to be entered in this cause, that, upon the payment of the said amount, within a period to be fixed by the said decree, by the defendant to the United States, all the securities held by the United States, by virtue of the said *ipso facto* mortgage of the railroad, its rolling stock and appurtenances, and by virtue of the security provided in the rights reserved to resume possession of all of the said lands which shall
39 remain in the ownership of the company, and by virtue of the said sinking fund so constituted by the said act of May 7th, 1878, and by virtue of the said lien upon all other property of this defendant so created, or attempted to be created, by section 9 of said act of May 7th, 1878, shall be fully and completely released and discharged of all manner of lien, claim or right of the United States in respect of the said properties or any part of the same, so that upon such payment this defendant shall hold all of the said railroad, lands and property and assets free and clear of any claim or demand of the plaintiff in this suit.

6. And this defendant further alleges that it is entitled to a further provision to be inserted in the said decree, that in the event of a failure on the part of this defendant to pay the amount so found to be due within the period so determined, then and in that event, all of the said property and rights so held by the United States, that is to say, the railroad, rolling stock and appurtenances covered by the said *ipso facto* mortgage, all of the said lands covered by the grants contained in the said act of July 1, 1862, and July 2, 1864 (subject to all sales and dispositions which may have been made by this defendant), all of the property, securities and money contained in the said sinking fund as the same shall be determined, and all right, title or interest acquired by the United States, if any, under the provisions contained in section 9 of the act of May 7th, 1878, shall be directed to be sold at public auction in accordance with the usual rules and practice of this court in cases of foreclosure and the proceeds of such sum applied to the satisfaction or part satisfaction of the amount found to be due by this defendant to the United States for the principal and interest remaining due and unpaid on the said bonds.

All of which this defendant stands ready upon the hearing of this cause, and in accordance with the rules of practice and procedure of this honorable court, to maintain and prove without this: that, if there is any other matter, cause or thing in said bill of complaint contained material or necessary for this defendant to make answer to and not herein well and sufficiently answered, confessed or denied, is true to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver,

maintain and prove as this honorable court shall direct. This defendant prays to be hence dismissed in this behalf accordingly.

THE UNION PACIFIC RAILWAY COMPANY,
By OLIVER W. MINK,
Its Second Vice-President.
W. R. KELLY, *Its General Solicitor.*

40 STATE OF NEW YORK, *City and County of New York,* } *ss:*

Oliver W. Mink, being duly sworn, says that he is the second vice-president of The Union Pacific Railway Company, the above-named defendant; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

OLIVER W. MINK.

Sworn to and subscribed before me this 19th day of March, 1897.

[SEAL.] EDWARD C. MANNERS,
Notary Public (H), New York County.

(7675.)

(My commission expires M'ch 30, '97.)

Indorsed: Filed Mar. 22, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on said 22nd day of March, 1897, separate answer of S. H. H. Clark *et al.*, receivers, was filed in said case, which said separate answer is in the words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

THE UNITED STATES OF AMERICA, Complainants,
against
THE UNION PACIFIC RAILWAY COMPANY, S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, FREDERIC R. COUDERT, and JOHN W. DOANE; F. GORDON DEXTER and OLIVER AMES, Trustees; The Union Trust Company of New York, Trustee; J. Pierpont Morgan and Edwin F. Atkins, Trustees; The Central Trust Company of New York, Trustee, Defendants.

Separate answer of S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, receivers, to the complainants' bill of complaint herein.

These defendants saving and reserving to themselves all manner of benefit or advantage of exception or otherwise that may be had

or taken to the many errors, uncertainties, imperfections, in said bill of complaint contained, for answer thereto or to so much thereof as these defendants are advised is material or necessary for them to make answer unto, answering, say as follows:

Answering all those portions of the bill of complaint herein which purport to set forth the terms and effect of certain acts
41 of Congress of the United States in said bill mentioned and referred to, these defendants, not admitting complainants' allegations in respect thereto, refer to said acts of Congress themselves for the full terms and provisions thereof, and deny any statement of the purport or effect of said several acts which shall be found to be inconsistent with the terms of said acts. They admit the creation and organization of said railroad companies in complainants' bill mentioned as therein stated, and the construction of the railroad of said company; they admit that the Union Pacific Railway Company is a corporation created about the 24th of January, 1880, by the consolidation of the several railway companies in complainants' bill referred to, viz., the Kansas Pacific Railway Company, the Denver Pacific Railway and Telegraph Company and the Union Pacific Railroad Company, and that the said Union Pacific Railway Company, as such successor and consolidated company, became vested with all the properties, rights and franchises of the said several companies, and became charged with the obligations of said several companies in the manner and to the extent which by operation of law and said articles of consolidation were imposed upon it.

They further admit that said Union Pacific Railway Company, on the 13th day of October, 1893, was insolvent, and that from thence hitherto the said Union Pacific Railway Company has continued to be and is insolvent and in the possession of receivers as hereinafter alleged. They admit that on the 13th day of October, 1893, in a certain cause in equity brought in this court by Oliver Ames, Second, and Samuel Carr, executors of the last will and testament of Frederick L. Ames, deceased, and others, complainants, against The Union Pacific Railway Company and others, defendants, for relief, prayed in said bill, including among other things the appointment of receivers for said railway and appurtenances and the properties of the said Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink and E. Ellery Anderson, were by the consideration of this court and in accordance with the prayer of said bill appointed receivers by this court of said defendant The Union Pacific Railway Company and of all the properties, real, personal and mixed, mentioned and described in said bill, for a more full and detailed description of which these defendants pray leave to refer to the said bill and order appointing them receivers and the proceedings in said cause had.

These defendants further admit and allege that afterwards, on the 13th of November, 1893, upon the petition of the Attorney
42 General of the United States, and by the assent of the complainants and defendants in said cause, it was ordered, adjudged and decreed that John W. Doane and Frederic R. Coudert

should be and they were appointed additional receivers by this court of said property in said cause, and the defendants admit that thereafter said S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert, so appointed as such receivers, duly qualified and entered upon the performance of their duties as receivers under the orders of their appointment as such, and that they took possession of the property of the said Union Pacific Railway Company, which came into their hands and which they have been able to reduce to possession, and that they have remained in possession thereof as receivers under the orders and in the manner herein fully shown.

They aver that on or about the 16th day of July, 1894, there was filed by Russell Sage and George J. Gould, trustees, complainants, against The Union Pacific Railway Company and others, defendants, in the circuit court of the United States for the district of Kansas, a certain bill to foreclose a mortgage given by the Kansas Pacific Railway Company upon all and singular that portion of the properties of the Union Pacific Railway Company extending from Kansas City, Missouri, to Denver, in the State of Colorado, and that under the said bill such proceedings were thereafter had as that these defendants were thereafter appointed by the said court receivers of all and singular the properties of the Union Pacific Railway Company, which were mentioned and described in the mortgage of the said trustees, complainants, being the property lastly above mentioned, and these defendants pray leave to refer to the said bill to foreclose the said mortgage and the several orders under which these defendants were appointed receivers thereunder with the same effect as if said matters were herein pleaded at length; and they allege that as to the said properties mentioned and described in the said bill they have been the receivers thereof under and by virtue of the authority conferred upon them by the orders of said court, and not otherwise.

That on or about the 19th of November, 1894, there was filed by Russell Sage and George J. Gould, trustees, complainants, in the circuit court of the United States for the district of Colorado, a certain bill against The Union Pacific Railway Company and others, defendants, wherein and whereby the said trustees, complainants, sought to foreclose the certain mortgage given by the Denver Pacific Railway and Telegraph Company, which embraces the properties and railroad of the Union Pacific Railway Company extending from Denver in the State of Colorado to Cheyenne in the State of Wyoming; and they allege that under the said bill they were thereafter by appropriate orders duly appointed receivers of all and
43 singular that portion of the railroad of the Union Pacific Railway Company mentioned and described in the said complainants' lastly above named bill to foreclose the mortgage herein referred to, and that since the date of their appointment as receivers in said cause they have held and operated the properties mentioned and described in the said bill as receivers under the authority conferred upon them as such receivers by the said orders of their appointment, and not otherwise; and they pray leave to refer to the

said bills and the orders appointing them as receivers with the same effect as if the said bills and each of the said several orders were herein pleaded at length.

They further allege that on or about the 21st of January, 1895, there was filed in the circuit court of the United States for the district of Nebraska, by F. Gordon Dexter and Oliver Ames, 2d, trustees, complainants, against The Union Pacific Railway Company and others, defendants, a certain bill to foreclose a mortgage given by the Union Pacific Railroad Company against and embracing the railroad of the Union Pacific Railroad Company from its eastern terminus to a point five miles west of Ogden in the Territory of Utah, and that in said proceeding and under said bill the receivers, these defendants, were thereafter appointed as receivers of all and singular the properties mentioned and described in said bill, being the said railroad lastly above described, and that from the time of their appointment under the said last-named bill they have continued to operate all of the properties of the said Union Pacific railroad therein mentioned, under and by virtue of the powers conferred upon them by the orders of their appointment as receivers and not otherwise. These defendants pray leave to refer to the said bills and orders of their appointment with the same effect as if they and each of them were herein pleaded at length.

These defendants further allege that as to each of the said bills to foreclose, lastly above mentioned, under like proceedings and ancillary bills, they were in like manner appointed as receivers of the several portions of property in each of the said orignal bills mentioned and described in those other States and Territories into and through which the properties severally mentioned in said bills extended.

These defendants further allege that, on or about the 21st day of November, 1895, H. M. Alexander and John F. Dillon, trustees, complainants, brought their certain bill against The Union Pacific Railway Company and others, defendants, wherein and whereby they prayed to foreclose the mortgage of the Union Pacific Railway Company, Eastern division, commonly known as the Kansas
44 Pacific Eastern Division mortgage, and that, in said bill, they prayed such relief as said complainants deemed themselves therein entitled to, among other things praying for the appointment of receivers in said cause, but that receivers have not yet been separately appointed in said cause.

They further respectfully represent that, on the 15th day of April, 1895, said John A. Stewart, August Rutten and William Endicott, Jr., trustees, under the mortgages of the Kansas Pacific Railway Co., dated, respectively, June 20th, 1869, and April 9th, 1879, as complainants, brought their certain bill in the circuit court of the United States for the district of Kansas against The Union Pacific Railway Company and others, defendants, in which said bill said complainants prayed for the foreclosure of the mortgages in said bill described, and which was made by said Union Pacific Railway Company, Eastern division, commonly known and referred to as the

Middle Division mortgage, both of which suits last named are, in respect of a portion of the properties of the Union Pacific Railway Company, situate in the State of Kansas, east of the 394th mile-post on said railroad.

These defendants further respectfully represent that on or about the 5th day of August, 1895, the Mercantile Trust Company, trustee, brought its certain bill to foreclose the mortgage given by the Union Pacific Railway Company known as the Kansas Division and collateral mortgage, which mortgage was made by the Union Pacific Railway Company and bears date May 1, 1891, which said suit was brought against the said Union Pacific Railway Company and others in the circuit courts of the United States for the districts of Kansas, Colorado, and Wyoming, under which said bill the said Mercantile Trust Company prayed, among other things, for the foreclosure of said mortgage, and for such relief as said complainant deemed itself entitled to, among other things praying for the appointment of receivers therein; and these defendants allege that no receivers have as yet been appointed in said cause. They also state that all of the said several causes yet remain pending and undetermined.

These defendants, further answering, say that since their appointment as receivers in said several causes they have continued to and still act as such receivers, and have managed, operated and controlled the properties which came to them in their capacity as receivers in said several suits under the authority and direction of the court of their several appointments as such receivers; that they have received the income and revenues of the properties of the Union Pacific Railway Company, and have possessed and controlled the estate thereof under the orders of their appointment as re-
45 ceivers, and have paid out and disbursed such money as they have so paid under the authority and direction of the court in the premises from time to time as the court ordered and directed them to do. And these defendants pray leave on the hearing hereof to read and exhibit any of the said several bills hereinbefore referred to and any of the orders made by the court appointing them as receivers in the said several causes, and any of the orders made by the court touching the duties imposed upon them as receivers, and directing or controlling them in the receipt and disbursement of moneys in any of said suits as they may hereafter be advised, and they aver that the receivers in and about the possession, use, management and operation of said properties have acted as the hands of the court in dealing with, managing and controlling said properties, and they pray that they may be allowed full and proper credits for all moneys paid out by them under and by virtue of their office as receivers of said properties.

They pray that upon final hearing hereof the court may ascertain the condition of the accounts of these defendants in the several suits in which their accounts may be rendered with reference to said properties and the disbursement of moneys in respect thereof, and that upon final accounting of these defendants as receivers in

said several causes they may be allowed out of the moneys ar
from the operation of the Union Pacific Railway Company o
separate or several mortgage divisions hereinbefore referred to,
out of that part of the property mentioned and described in
bill of complaint in said Ames cause, all of their disburseu
made or paid by them in respect of the properties in their han
receivers in said several causes, and which were so paid out by t
under orders and directions of the court made or given in
Ames cause or in any of the said foreclosure causes hereinbefor
ferred to, so that for all of their disbursements so made they may
full, complete and perfect protection and that the court will recog
adopt and approve in this cause and in any proceeding affecting t
their accounts of their administration filed or to be filed in an
said causes, and that these defendants, receivers, may, by pr
orders of the court in said causes or herein be protected
directed in respect of all moneys so by them paid out in and
or on account of any of the properties of the Union Pacific Rai
Co. so in their hands and custody as aforesaid. They pray fu
that, in case it shall finally appear that the receipts or inc
derived from the operations of said railway company or of an
the mortgage divisions thereof are of themselves insufficie
reimburse the said receivers for moneys paid out by then
account thereof, that then they may have proper prote
46 in respect of such expenditures or of any obligations incu
in behalf of the said railway company or any of the
gage divisions thereof, by a proper order and decree fixing
amount of such excess of expenditure or of obligations incurred
making the same a first and prior lien upon either the propc
— said Union Pacific Railway Co. or upon any of the separa
several mortgage divisions thereof as the court may deem just,
that they may have such other and further complete relief of
in respect of their management, operation and control of said
erties of said Union Pacific Railway Co., and each and every o
mortgage divisions thereof, as may be necessary for their com
and final protection.

And these defendants aver that since their appointment a
ceivers of the said properties of the Union Pacific Railway Co.
sums of money have been earned by them in the operation of
railroad for the carriage and transportation of persons, mails
properties of the United States over the lines of railroad owne
the Union Pacific Railway Co. and operated by them as rece
as aforesaid, and for services rendered by them as receivers of
railway company's properties and in repect thereto for the U
States of America, which the United States of America has reta
to itself, claiming the right so to do under the terms and condi
of the acts of Congress in complainants' bill herein mention
referred to, so that said moneys commonly known as Govern
earnings on the said properties of the Union Pacific Railway
or part of them, have not in fact come into the possession and
tody of said receivers, and that all of said moneys so withhe

the United States are withheld upon the account of, and, as claimed by the complainants, for the credit of the Union Pacific Railway Co., or one of its predecessor companies.

And your receivers pray that on the hearing thereof an account may be had of the said so-called Government earnings so withheld and a proper order or decree made in respect thereof for the complete protection and relief of these defendants as receivers as aforesaid in respect of said moneys, to the end that the true amount of said moneys may be properly ascertained and the credits or allowances made in respect thereof as required by law and by the rights of the respective parties herein, all of which these defendants stand ready upon hearing of this cause and in accordance with the practice and procedure of this honorable court to maintain and prove, without this, that if there is any other matter, cause or thing in said bill of complaint contained material or necessary for these defendants to make answer to and not herein well and sufficiently answered, confessed or denied, as true, to the knowledge and belief of these defendants, all of which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct and they pray to be hence dismissed in this behalf accordingly.

47 & 48

S. H. H. CLARK,
OLIVER W. MINK,
E. ELLERY ANDERSON,
FREDERIC R. COUDERT,
JOHN W. DOANE,
Receivers,

By W. R. KELLY,
Their General Solicitor.

STATE OF NEW YORK, }
City and County of New York, } ss:

Oliver W. Mink, being duly sworn, says that he is one of the above-named receivers of the Union Pacific Railway Company; that he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge, except as to matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

OLIVER W. MINK.

Sworn to and subscribed before me this 19th day of March, 1897.

[SEAL.] EDWARD C. MANNERS,
Notary Public (26), *New York County.*

(My commission expires M'ch 30, '97.)

(7703*a*.)

Indorsed: Filed Mar. 22, 1897. Oscar B. Hillis, clerk.

Thereupon, afterwards, to wit, on the 3rd day of May, 1897, petition of Credits Commutation Company for leave to intervene was filed in said case; which said petition is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT.

DISTRICT OF NEBRASKA.

IN EQUITY.

UNITED STATES OF AMERICA, *Complainant,* vs. UNION PACIFIC RAILWAY COMPANY, ET AL., *Defendants.*	No. 157 S. IN EQUITY.
F. GORDON DEXTER AND OLIVER AMES, SECOND, TRUSTEES, *Complainant,* vs. UNION PACIFIC RAILWAY COMPANY, ET ALS., *Defendants.*	No. 48 R. IN EQUITY.
OLIVER AMES, SECOND, AND SAMUEL CARR, EXECUTORS, ETC., ET ALS., *Complainants,* vs. UNION PACIFIC RAILWAY COMPANY, ET ALS., *Defendants.*	No. 94 Q. IN EQUITY.

PETITION OF CREDITS COMMUTATION COMPANY FOR LEAVE TO INTERVENE IN THE ABOVE-ENTITLED CAUSES.

PART ONE.

OF THE PETITIONER'S STANDING AND INTERESTS.

RESPECTFULLY REPRESENTS your petitioner:

(1) That your petitioner is a corporation duly organized under the laws of the State of Iowa and is a citizen of that State, having its place of business in Sioux City in said State.

(2) Your petitioner owns all the stock of a combined railroad and wagon bridge recently completed across the Missouri river at Sioux City, at a cost of about a million and a quarter of dollars, and as beneficiary under an assignment, is entitled to three-quarters of the capital stock of the Sioux City and Northern Railroad Company, which has lately constructed, at a cost of about two millions, a railroad extending northerly from Sioux City about one hundred miles to a junction with the Great Northern Railroad, over whose lines it makes connection with the head of the Great Lakes at Duluth; also all the stock of another railroad company called the Sioux City, O'Neill & Western, built at about the same time at a cost of about two millions and a half, running one hundred and thirty miles west from Sioux City, Iowa, to O'Neill in Nebraska, which railroads are connected by the aforesaid bridge of your petitioner; also, the stock of said Sioux City and Northern Railroad Company also carries with it all the stock of a Terminal Company owning large and valuable terminal properties recently constructed in said Sioux City at a cost of about two mil-

lions, designed to accommodate the railroads aforesaid, and all other railroads running into Sioux City; and substantially all interests in said properties of alleged priority to the interest of your petitioner therein are claimed by your petitioner, but are in controversy and involved in pending litigation; and your petitioner owns or has a controlling interest in certain other extensive industries in said Sioux City, dependent upon railroad facilities and the rates of fare thereof, so that the cost of all the undertakings aforesaid represented by your petitioner herein amounts to about ten million dollars. And your petitioner is also representative of other interests hereinafter mentioned, which, your petitioner submits, entitles it to standing herein.

(3) And your petitioner shows that the comprehensive design and single purpose of all said quasi public enterprises of your petitioner was to promote and accommodate an interchange of traffic and transportation between the country west of the Missouri river at Sioux City and the head of lake navigation at Superior and Duluth, and that the usefulness and value of all said railroad terminal and bridge properties depend, for the most part if not almost wholly, upon such connection as may be made between the same and the main line of said Union Pacific Railroad, and upon the place of such connection, and the just and equitable terms thereof.

(4) That your petitioner was organized and acquired said properties and completed said bridge for the purpose, among others, of securing a connection thereof with said Union Pacific Railroad by building or causing to be built or extended a railroad from said Sioux City in a general southwesterly direction to a junction with said Union Pacific Railroad as aforesaid.

Your petitioner is also the owner of one of the first mortgage bonds hereinafter mentioned of the Union Pacific Railroad Company, and brings this petition for the protection of its several interests herein, for itself and all others in like situation who may choose to join in this petition.

(5) Said defendant, the Union Pacific Railway Company, purports to be a consolidated company, the constituents whereof were the Union Pacific Railroad Company and the Kansas Pacific Railway Company, which last-named company was, by assignments, transfers, and change of names, successor to a number of predecessor companies.

(6) Said Union Pacific Railroad Company was created by a certain Act of Congress, called the Act of July 1st, 1862, by which Act said Union Pacific Railroad Company and the predecessors of said Kansas Pacific Railway Company, and certain other companies, to-wit, the Central Pacific and the Western Pacific Railroad Companies, were authorized to co-operate in building a single and entire line of railroad and telegraph with three branches on the east which were to converge from Sioux City, Council Bluffs, and Kansas City, all on the Missouri, to a common junction to the westward thereof on or near the one hundredth meridian of longitude, and thence to extend westerly in a single trunk line to the Pacific Ocean.

(7) And that "to secure to the government the use of the same for postal, military, and other purposes," Congress, in and by said Act, conferred upon said companies grants of vast and valuable tracts of the public lands, and certain rights, privileges, and franchises, and

further subsidized said companies by a large advance to them of the public credit in the form of the bonds of the United States, all to aid in the construction of said roads.

PART TWO.

OF THE PUBLIC AND QUASI-PUBLIC OBLIGATIONS OF SAID UNION PACIFIC RAILWAY COMPANY, ESPECIALLY PERTINENT TO THE RIGHT OF YOUR PETITIONER TO INTERVENE IN THE FIRST OF THE ABOVE ENTITLED SUITS—THAT ONE BROUGHT BY THE UNITED STATES.

(8) All the grants, rights, privileges, and franchises aforesaid were made to said companies on condition that said companies should pay said subsidy bonds at the maturity thereof; and to secure the payment of said bonds and interest thereon, a statutory first mortgage or lien was by said Act created upon the roads and properties of said bond-aided Pacific Railroad Companies, and further, by said Act and in consideration of the public aid aforesaid, certain duties, obligations, and servitudes were imposed upon said companies, their successors and assigns, and upon the railroad constructed by them and the operations thereof, and were by said companies assumed in the acceptance of said Act.

(9) Your petitioner, showing that the public credit and domain are not subject to disposition by the government for the general benefit of the government as such, but only for limited purposes of the government, and may for the most part be disposed of only in consideration of benefits to be thereby secured to the public generally, or such of the public as may wish, or have any peculiar interest, to avail of such benefit, and may not be disposed of by the executive department of the gov-

ernment at all without the authority of Congress, says that certain public and quasi public duties, obligations and servitudes were imposed upon said bond-aided Pacific Railroad Companies and their respective railroads in consideration of the public aid and grants rendered to them by the United States as aforesaid, in most of which your petitioner has interests in common with the public and special and peculiar to itself, all of which are put in jeopardy as hereinafter stated and for the protection or defence of which no party appears in said proceedings. Your petitioner says that said public and quasi public duties, obligations and servitudes are divisible into classes substantially as follows:—

First: Such as are due to such of the public as may wish or have any peculiar interest to avail of the benefit of performance.

Second: Such as are due to certain sections of the country.

Third: Those due both to the government as such and to the public.

Fourth: Those not due to the government as such, and the benefit whereof is intended to inure wholly to the public.

Fifth: Those due to the government as such, but in the performance whereof the public or some of the public have general or peculiar interests.

Sixth: Those due to the government as such, and in which the public or any member of it has no interest.

OBLIGATIONS OF SAID COMPANY DUE TO THE PETITIONER.

FIRST: BECAUSE OF ITS OWN SPECIAL OR PECULIAR INTERESTS.

(10) Among the duties, obligations and servitudes first above described, performance whereof is due to such of the public as may wish or have any peculiar interest to avail of the benefit thereof, are those contained in the fifteenth section of said Act of July 1st, 1862, as follows—

"Sec. 15. AND BE IT FURTHER ENACTED, That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon such just and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto."

Your petitioner shows that, by the provisions aforesaid, the President of the United States must fix the place of connection with said Union Pacific Railroad before any company desiring the same can be sure that its incorporated location will conform therewith.

(11) Your petitioner was organized in the latter part of the year 1894, but has abstained from making any application to the President of the United States to fix the place at which and the just and equitable terms upon which your petitioner should build a railroad to connect with the road of said Union Pacific Railway Company; because said company had become embarrassed and all its property was and ever since has been in the hands of receivers appointed by this Court, and said company was and ever since has been apparently insolvent, and bills in equity have been filed, in this Court and others,

to obtain foreclosure in behalf of certain alleged first mortgage bonds purporting to have been secured by liens and mortgages upon the road of said company; under which circumstances any such application would seemingly have been ill-timed and unavailing. And especially has your petitioner thus abstained, for the further reason that the obligations of said railroad company to pay certain subsidy bonds hereinafter mentioned has been in the meantime maturing, and legislation to adjust the indebtedness thereof and to avail of the security therefor and to provide for a reorganization of said company has been constantly pending before Congress, to which tribunal, as the more appropriate to safeguard your petitioner's interests, your petitioner has constantly appealed by appearing before committees of both branches of Congress, and thus and otherwise urging the enactment of just and suitable laws for the protection of your petitioner's said interests; and while thus engaged and while the Congress was intent upon the matter, your petitioner was surprised with the information that the Attorney-General had entered into an agreement to prosecute and submit to foreclosure sales of or under the lien of the United States, and other alleged liens upon the property of said Union Pacific Railway Company securing said subsidy bonds and certain other bonds asserting a lien in priority to the lien of the United States, and had filed his bill in behalf of and purported to have entered an appearance for the United States in the foreclosure suits aforesaid to effect such sale of said Union Pacific Railroad.

(12) Your petitioner, to protect the interests peculiar to itself as aforesaid against the threatened danger of any deprivation of a right to build its railroad to and to

connect the same with said Union Pacific Railroad on just and equitable terms, as aforesaid, by any foreclosure sale in the premises, asks to be admitted a party hereto.

SECOND: OF THE DUTIES OF SAID BOND-AIDED PACIFIC RAILROADS TO DIFFERENT SECTIONS OF THE COUNTRY.

(13) Further, your petitioner submits that the local and peculiar public interests represented by your petitioner practically determine the place at which and the just and equitable terms upon which your petitioner should be allowed to build or extend a railroad to a junction with the Union Pacific Railroad under the provisions of the act above quoted.

(14) Your petitioner says: That a purpose is declared in said Act of July 1st, 1862, and in the debates of Congress, whereby the passage thereof and of other acts amendatory thereto were secured to give to all sections of the country east of the Missouri river and to the existing and prospective railroad systems thereof participation in and equal aids and facilities to avail of the benefit of the transcontinental transportation to be afforded by the national aid rendered to said Pacific Railroads; and to that end it was provided in said act that the eastern terminus or initial point of the trunk line of said Pacific Railroads should be at the one-hundredth meridian of longitude, from which three branches should diverge to points on the north and south trend of the Missouri river, from and between Sioux City on the north

and Kansas City on the south, which were to compose two of said branches; and Council Bluffs was afterwards named as the easterly end of the third branch. That the provision in behalf of Sioux City and the middle Northwest is in Section 14 of said Act of 1862, as follows:—

"And whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific Railroad Company is hereby authorized and required to construct a railroad and telegraph from said Sioux City upon the most direct and practicable route to a point on, and so as to connect with, the branch railroad and telegraph in this section hereinbefore mentioned, or with the said Union Pacific Railroad, said point of junction to be fixed by the President of the United States, not further west than the one-hundredth meridian of longitude aforesaid, and on the same terms and conditions as provided in this act for the construction of the Union Pacific Railroad as aforesaid, and to complete the same at the rate of one hundred miles per year; and should said company fail to comply with the requirements of this act in relation to the said Sioux City railroad and telegraph, the said company shall suffer the same forfeitures prescribed in relation to the Iowa branch railroad and telegraph hereinbefore mentioned."

(15) That afterwards, by a certain other act, known as the Act of July 2nd, 1864, said Kansas City branch was allowed to proceed straight west from that city to Denver, and thence to connect with the main line of said Union Pacific Railroad at Cheyenne; substantially like rights and on similar conditions to connect the Sioux City branch at a point further west than the one hundredth meridian were also accorded, and the Union Pacific Railroad Company was relieved from building the same; all in Section 17 of said Act of July 2nd, 1864, as follows:—

"And be it further enacted, That so much of section fourteen of said Act as relates to a branch from Sioux City be, and the same is hereby, amended so as to read as follows: That whenever a line of railroad shall be completed through the States of Iowa, or Minnesota, to Sioux City, such company, now organized, or may hereafter be organized, under the laws of Iowa, Minnesota, Dakota, or Nebraska, as the President of the United States, by its request may designate or approve for that purpose, shall construct and operate a line of railroad and telegraph from Sioux City, upon the most direct and practicable route to such a point on, and so as to connect with, the Iowa branch of the Union Pacific Railroad from Omaha, or the Union Pacific Railroad, as such company may select, and on the same terms and conditions as are provided in this act and the act

to which this is an amendment, for the construction of the said Union Pacific Railroad and telegraph line and branches; and said company shall complete the same at the rate of fifty miles per year; Provided, That said company constructing said branch shall not be entitled to receive in bonds an amount larger than the said Union Pacific Railroad Company would be entitled to receive if it had constructed the branch under this act and the act to which this is an amendment; but said company shall be entitled to receive alternate sections of land for ten miles in width on each side of the same along the whole length of said branch."

(16) Your petitioner says that said amendment was not intended or understood to vary the general location or direction of said Sioux City branch, and that the construction thereof would have afforded to Sioux City and the middle Northwest and the head of lake navigation more than three hundred miles of as direct western connection with the Union Pacific as that secured to and enjoyed by the other sections of the country served by the other branches; that the scope of said acts to the general intent aforesaid and including the contemplated location and direction of said Sioux City branch was after both said acts were passed in effect judicially declared by the Supreme Court in the case of Union Pacific Railroad Company v. Hall, 91 U. S., 343.

(17) Your petitioner begs to call attention to the fact that not only the towns at the three eastern termini of the branch lines aforesaid were intended to be equally and alike benefitted by connection with the trunk line aforesaid, but that provision was made for participation therein by all other prospective railroad centers on the stretch of the Missouri river above mentioned; the company which was to build the Kansas City branch was required either to locate said road by way of Leavenworth, or to build a branch to Leavenworth; a line from St. Joseph was either to reach the Pacific Railroad's system by way of Atchison, from which last-named place

a connecting line was also to be subsidized, or an unsubsidized line from St. Joseph could be built to a direct connection with said Union Pacific Railroad.

(18) And your petitioner shows that said three bond-aided branches were to enjoy certain advantages and privileges of great and almost inestimable value to themselves and the sections of the country to be served by them, especially as set forth in the fifteenth section of said Act of July 2, 1864, as follows:—

"Sec. 15. AND BE IT FURTHER ENACTED, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and the Government are concerned, as one continuous line; and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others."

(19) But your petitioner says that the section and traffic to be served by the branch from Sioux City were substantially deprived of the promised connection with said Pacific roads and are threatened with an extinction of all the rights and protection secured to all the branches alike in said fifteenth section of said Act of 1864 aforesaid, by the declared purpose in the above-entitled causes to procure a sale of the rest of said Union Pacific Railroad, without including therein and as a part thereof any connection with Sioux City and the middle Northwest whatever.

(20) To show more explicitly the sectional grievances of the middle Northwest and Sioux City and the injury to the then existing and prospective traffic and business thereof and to your petitioner, your petitioner says that, under the provisions of said Act of 1864 hereinbefore mentioned, the President designated a corpora-

tion known as the Sioux City and Pacific Railroad Company to build said Sioux City branch, which company had already theretofore surveyed a location for a road of its own, ostensibly as a feeder—which, in fact, it always has been—to another railroad, known as the Chicago and Northwestern, then building across said State of Iowa to a prospective junction with the Council Bluffs branch of the Union Pacific Railroad at or near Fremont in the State of Nebraska, both which feeder and said Chicago and Northwestern Railroad were apparently, and your petitioner on information and belief alleges were, in truth and in fact, owned and controlled by substantially the same men and in a common interest.

(21) And your petitioner, on information and belief, says that the officers and controllers of said Sioux City and Pacific Railroad Company, conspiring and confederating to divert the grants and subsidies of the government from aid to the construction of the Sioux City branch of said Union Pacific Railroad on the true and contemplated line and location thereof aforesaid, and to avail of the same for the building of said feeding line to said Chicago and Northwestern, and to aid in the extension of the latter, made and procured to be made to the departments of the government whose sanction and approval were necessary in the premises, misrepresentations in substance and effect that high and precipitous bluffs on the banks of the Missouri river opposite Sioux City, and the absence of any valleys or ravines through the same, and the presence of formidable hills and reservations occupied by possibly hostile Indians, and other and like moral, physical and other insurmountable obstacles prevented the construction of the Sioux City branch of said Union Pacific Railroad along the line and

location contemplated by the laws relating thereto, and misrepresentations to the effect that the most direct and practicable route for such connection was on the line already theretofore selected for its own road by said Sioux City and Pacific Railroad Company, and then over the Chicago and Northwestern Railroad, which it was to join, through to Fremont aforesaid; and having by such means procured the acceptance of said location, it constructed said branch on its own location aforesaid, whereby the same was made to run from Sioux City in a general southeasterly direction away from the Pacific down the eastern bottom-lands of the Missouri river about seventy miles, at which point it is twenty or thirty miles further from the Pacific than when it started; and there joining the Chicago and Northwestern Railroad, it proceeds west, supplementing and extending the last-named railroad to Fremont, where, after completing a total length of but little over one hundred miles from Sioux City, it ended almost due south thereof in a junction with the Council Bluffs branch of said Union Pacific aforesaid.

(22) None of the alleged obstacles to the construction of said branch on the location contemplated by the Acts of Congress did in fact exist. The mislocation of said branch and misdirection of the government's aid aforesaid at once became and ever since have been of public notoriety and a cause of constant protest and complaint on the part of sections immediately affected, the public records whereof are too voluminous to permit any exhaustive recital thereof herein; but your petitioner begs leave to call attention at the hearing in support hereof, to the reports of committees and commissions appointed by Congress, and the reports of the various de-

partments of the government, the debates in Congress, and the resolutions of the legislatures of the Middle Northwestern States thereon. Wherefore, your petitioner submits that said Sioux City and Pacific Railroad Company did "not complete the said branch from Sioux City to the Pacific Railroad within ten years from the passage of this act (of July 2, 1864, Sec. 17) as contemplated by the provisions of this act"; and for that reason by said section of said act, "all the railroad which shall have been constructed by said company shall be forfeited to and become the property of the United States."

(23) The Middle Northestern States were in manner aforesaid and ever since have been cut off from the connection with the Pacific Railroad systems as contemplated, and, to correct this wrong, or, at least, to prevent a continuance of the consequent discrimination against that section and Sioux City, your petitioner, when said Pacific Railroad Companies were becoming bankrupt and in default in their obligations to the United States, sought relief from Congress, whereby the promised connection aforesaid might be secured in any reorganization of said companies or their properties which Congress should permit; and in furtherance of their just demands represented by your petitioner aforesaid herein, business associations and the people in the towns and cities and associations in the Middle Northwestern States supported your petitioner, with petitions and memorials addressed to Congress, to which your petitioner craves leave to refer at the hearing.

(24) While your petitioner was seeking the aid of Congress in the premises, the Attorney-General filed his bill in the first of the above-entitled suits for foreclosure

sale and purported to enter his appearance for the United States in the second of said suits; in both which proceedings it is the manifest and declared purpose to sell the trunk line of said Union Pacific Railroad, together with the branches thereof aforesaid from Kansas City and from Council Bluffs as one property and an entirety, whereby said branches and the cities and sections at the eastern terminus and along the lines thereof will preserve their connection with said Union Pacific Railroad and participation in its business as contemplated, but it is not intended and is impossible, for want of default, to include in said sale as a part thereof the line of said Sioux City and Pacific Company, so that even that pretended but inadequate connection of Sioux City and the Middle Northwest with said Union Pacific Railroad as a part thereof and entitled to the terms of connection aforesaid will in any such sale be taken away.

(25) Your petitioner, showing that there are now large railroad systems entering Sioux City, and which have no connection with said Pacific Railroad, and that your petitioner owns or controls the best and practically the only terminals, bridges and facilities in the Middle Northwest to accommodate such connection, and being desirous of building a railroad to effect the same, begs leave to intervene herein to protect its right so to do, and either to prevent any foreclosure sale of the Union Pacific Railroad, or to secure in any decree therefor, among other just and equitable terms of the right to connect therewith, the benefit of the provision of the laws above quoted, just as if your petitioner's proposed road had been built in place of said Sioux City and Pacific Railroad, which cannot be sold in said foreclosure proceedings, and otherwise to protect the interests owned and

represented by your petitioner in the premises against the risk of any deprivation of any of the same by any foreclosure sale herein.

THIRD: OF THE OBLIGATIONS OF SAID BOND-AIDED RAILROADS DUE BOTH TO THE GOVERNMENT AS SUCH, AND TO THE PUBLIC.

(26) Your petitioner begs leave to submit as a proposition supported by the law and facts relied upon in every part of this petition, that in contemplation of the government and the people, the bond-aided Pacific Railroad Companies built but one railroad, and none of it can be sold separate and apart from the rest; that your petitioner, as owner and controller of large shipping and receiving interests hereinafter explained, is entitled to standing in its own right, without intervention of the United States, and beyond their control, except by act of Congress, to have the unity of the system of roads preserved.

(27) In addition to the acts hereinbefore quoted, which show the unity of the road, attention is called to other like provisions. The title of said Act of 1862 is: "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the government the use of the same for postal, military, and other purposes."

The acts constantly speak of it as one railroad. By Section 12 of the Act of 1862, "The track upon the entire line of said railroad and branches shall be of uniform width * * * so that, when completed, cars can be run from the Missouri River to the Pacific Coast." The building companies had few or no separable and inde-

pendent rights, but they could consolidate, and, under certain conditions, the location of either could be changed by others so as to make it conform to their own, both as to branches (Sec. 9, Act 1862) and the meeting of trunk lines (Sec. 12, Act 1864; Act of July 3, 1866; Act of May 6, 1870). If any of said companies failed to build fast enough to complete its alloted part in the time limited for that purpose, the others, one or more, could build in its place, and, finally, the ones that built the fastest could build the most (Section 10, Act 1862; Sections 12 and 16, Act 1864; Act July 3, 1866).

The place for connection of the eastern and western ends was fixed three times by Acts of Congress (Sections 1 and 9, Act of 1862; Sec. 12, Act of July 2, 1864, and Act of May 6, 1870.) The companies respectively were required to transport the materials required by each other at cost (Section 12, Act of 1862.)

This idea of one road was carried so far that, by Section 17 of said Act of 1862, it was—

"Provided, That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri River to the navigable waters of the Sacramento River, in California, by the first day of July, eighteen hundred and seventy-six, the whole of all of said railroads before mentioned and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling stock, machine shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States."

Though this harsh provision was modified by Section 7 of the Act of 1864, insistance upon the unity of the road was not in any way relaxed, and the condition was retained, that for a failure to complete the whole, or for any failure afterwards—that is, now or hereafter—to keep the whole in repair, the United States could and can take the whole and use the income of the whole to repay the expenses of such repair (Sect. 17, Act 1862).

(28). Among other obligations and servitudes to preserve the unity aforesaid imposed upon said companies and road, and which are expressly due both to the government as such, and to the public, is the following, from Section 12 of the Act of 1862, substantially repeated in Section 15 of the Act of 1864:

"The whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the government and the public are concerned, as one connected, continuous line."

Attention is called to the fact that even though it be held that the lien of the subsidy bonds does not extend over any but bond-aided lines (United States v. Kansas Pacific Railway Company, 99 U. S., 455), yet the rights of the government in and to the use of the roads were secured by the grants of land rather than by the bond subsidy. Act, July 1st, 1862, Sec. 3. And the continuity of the whole was insisted upon.

By the Act of March 3rd, 1869, lands were granted to the companies building the extension of the Kansas Pacific line from the three hundred and ninety-fourth mile post west by way of Denver to Cheyenne, and it was enacted that:

"All the provisions of law for the operation of said Pacific railroad as a continuous line should apply to said extensions."

In the case of the United States v. Union Pacific Railway Company, 148 U. S., 562, the company successfully contended that the foregoing line was "continuous" within the acts aforesaid, the Court saying that the builders were "two corporations engaged in a construction of the same line of road."

(29). That said Section 15 of the Act of July 2nd, 1864, hereinbefore quoted, which secured co-operation between the roads and branches without discrimination

and re-enacted that they were to be operated as a continuous line, was by an Act of June 20th, 1874, amended so as to make it a criminal offense for those having the roads in charge to refuse so to operate them, and imposed punitive damages on the companies in behalf of anybody aggrieved by the refusal, and by the same act the Denver and Cheyenne connection was again made a part of the continuous line.

And that by Section 11 of the Thurman Act (May 7, 1878), the failure of any of the companies to perform the requirements of any of the acts aforesaid, for a period of six months, should operate as forfeiture of all rights, privileges, grants, and franchises derived or obtained from the United States.

(30). Wherefore, your petitioner shows that "so far as the government is concerned," any sale of the Union Pacific Railway or any part thereof without the contemporaneous sale of the whole, including the Sioux City branch thereof, and the Central Pacific Railroad too, and by which sale the whole or any part of either should pass to a purchaser free from the foregoing obligations, and that any operation of either or any part of either of said roads, as if so freed, would not only defeat the declared purpose of all aid rendered by the government, but would constitute a crime against it punishable by the imprisonment of the natural persons and the death and forfeiture to the government of the franchises and property of the offending company.

(31). That "so far as the public is concerned," such sale and operation subjects the offending company to punitive damages (Sec. 15, Act of July 2nd, 1864; Act of June 20, 1874). That by the act of May 3rd, 1873, any

Circuit Court of the United States can issue mandamus to the Union Pacific Railway Company to compel such continuous operation. That this applies to the branches as well as the main lines. That the mandamus shall issue on the application of your petitioner, to which proceedings the United States are not a pertinent party, all as held in

Union Pacific R. R. Co. v. Hall, 91 U. S., 343.

(32). Your petitioner calls attention to the fact that the foregoing case expressly recognizes the right of Sioux City to branch connection just like that then sustained by the court, and your petitioner submits as obvious that any foreclosure sale of all the rest of said Union Pacific Railroad separate and apart from the Sioux City branch, would be wholly destructive of the right aforesaid.

(33). Your petitioner is interested, as was the defendant in the above entitled case, in the act above quoted; as are also all the shippers and receivers of goods in said Sioux City and the country round about there, by transportation over the line of said Pacific Railroad; and especially has your petitioner an interest for this, that it owns the most valuable and controlling interest in the Sioux City Stock Yards Company, on which are located many large packing plants, making Sioux City one of the large packing points in the country, and constituting the principal industry of that city, and animals to supply the products thereof are, and under favorable connections and reasonable rates of fare, would be, largely drawn from the territory occupied by said Pacific Railroads.

FOURTH: OF THE OBLIGATIONS OF SAID COMPANY NOT DUE TO THE GOVERNMENT AS SUCH, THE BENEFIT WHEREOF IS INTENDED TO INURE WHOLLY TO THE PUBLIC.

(34). Among other provisions of the acts for aiding said Pacific road, which secures the unity thereof, and to inure to the benefit of the public rather than to the United States as such, is the following from Section 18 of the Act of July 1, 1862:

"Sec. 18. AND BE IT FURTHER ENACTED, That whenever it appears that the net earning of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs, and the furnishing, running, and managing of said road, shall exceed ten per centum upon its cost, exclusive of the five per centum to be paid to the United States, Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law."

(35). Your petitioner begs to call attention to the fact that this act requires the earnings of the "entire road" to be united and when such earnings exceed ten per centum upon its cost, Congress may reduce the rates of fare thereon, that is, on the "entire road."

(36). Your petitioner further shows that the reservation of power was not for the benefit of the United States and to secure the payment of its debt but obviously the reverse, and, in the sole interest of the public; for the earnings to be taken into account as aforesaid expressly include compensation for service rendered to the Government by the roads, which compensation, by other provisions of said act, was to be retained for the payment of the subsidy bonds and interest, the amount of which retention would be reduced by a reduction of rates of fare. It also contemplates that a reduction of rates of fare will necessarily reduce the five per centum of net earnings also to be paid to the government.

(37). And your petitioner, interested in the rates of fare on said road as aforesaid, submits that its right, in common with the right of all the public similarly situated, to petition Congress for the exercise of the power reserved to it as aforesaid, and the power of Congress to comply therewith cannot be taken away by a sale of said road, and especially not by a sale of a part thereof and the dismemberment of the same merely on the consent of the executive department or law officers of the government.

(38). Your petitioner submits that the powers and discretions which the Government and the President and the Congress and the Courts may exercise in the premises as hereinbefore set forth constitute a trust for the benefit of the public, the observance whereof is secured as a perpetual servitude imposed upon said railroads as an entirety, and should run with their properties and franchises as an entirety, to which all mortgages are subject, which the redemption of the subsidy bonds by the companies receiving the same would not terminate, and which, without authority from congress, the executive department of the Government should not attempt to extinguish by any sale in behalf of the Government's lien; and subject to which the Government would take the property in any forfeiture to or strict foreclosure in behalf of the United States, since the Government should itself be so bound as contemplated in the last part of Section 15 of the Act of 1862, even if provision in behalf of the public be not applicable to any other successor of said Union Pacific Railroad Company.

FIFTH: OF THE OBLIGATIONS OF SAID RAILROAD COMPANIES DUE TO THE GOVERNMENT AS SUCH, BUT IN THE PERFORMANCE WHEREOF

THE PUBLIC, OR SOME OF THE PUBLIC, HAVE A GENERAL OR SPECIAL INTEREST.

(39). Notwithstanding the contention of this petitioner that the rights and interests of the public and of your petitioner as a member thereof in said Pacific Railroad as hereinbefore stated would survive any foreclosure sale of said road in pursuance of any mortgage upon the same or any part thereof, yet your petitioner is apprehensive that if the government were to subject its interests in said road to sale to a stranger, such purchaser might claim that the right of the President of the United States to fix the place at which and to prescribe the just and equitable terms upon which your petitioner could connect a railroad with said Pacific Railroad was a power in the President, coupled with the interest of the United States; and that, upon such voluntary parting with that interest, the exercise of such a power would be a mere judicial function which could not be imposed upon the chief of the Executive branch of the Government, and, in like manner, that the right of Congress to reduce the rates of fare on said railroad was also a power coupled with an interest, and after such sale would be become a judicial function which could not be imposed upon the legislative branch of the government, and that the provision whereby the government may take the entire road and devote all its earnings to keep the whole in repair should, as a like power, be also lost by a sale of any part of said road with the Government's consent, and that the right of the Government to insist that said railroad shall be operated and used as a connected, continuous line from the Missouri river to the Pacific Ocean should be held to have been waived by a voluntary sale of a part and dismemberment of said road by or in be-

half of the United States; and your petitioner submits that an auction sale of said road by the United States, with no restrictions except to the highest bidder, would not only terminate the right of Congress to amend, alter, and repeal said Act of July 1st, 1862, as, by Section 18 of said Act, Congress may now do to promote the public welfare by keeping said railroad in working order for the use of the government at all times and particularly in time of war, but would even enable the contemplated enemy in such a war to become the purchaser.

(40). Your petitioner submits that, while the United States retains its interest in said railroad, or if said Companies shall simply discharge their financial obligations to the United States, as originally intended, none of the foregoing contentions can be raised, and that no sale of the interest of the United States should be made or suffered without the authority of Congress and the enactment of such laws for the protection of the government and public in the premises as Congress may see fit to impose as a condition of such sale.

Wherefore, your petitioner is interested in the lawful manner of the enforcement of the obligations of said Pacific Railroad Companies which are due to the United States as such.

(41). Your petitioner says that said bond-aided railroad companies are under obligation to redeem at maturity the subsidy bonds received by them, and concedes that this undertaking pertains to said companies severally to redeem the bonds they respectively received; that a failure of any company to do so does not work forfeiture, as hereinafter mentioned, by any other company (see Section 7, Act of 1864); that that obligation is due to

the United States as such, and that the enforcement of remedies for breach of the obligation is the duty of the law officers of the Government alone; and that the scope of their duties in any case wherein it is sought to proceed against any interest of the United States in a Federal Court, is to suggest such interest to the Court (Stanley v. Schwalby, 147 U. S., 508), whereupon it becomes the duty of the Court to protect that interest if possible, and, if not, then to decline further jurisdiction in the case (Cunningham v. Macon R. R. Co., 109 U. S., 446), all without appearance or suggestion by friends of the Court or other parties to the suit.

(42). But your petitioner relies upon the right which any party in interest has to the writ of mandamus from the Courts of the District of Columbia to compel the Attorney-General or any other cabinet officer of the Government to perform any duty whereunto he is expressly commanded (U. S. ex rel Oscar Dunlap v. Black, 128 U. S., 40); and to a writ of injunction from said Court to restrain such officer from disregarding or violating any such command.

Noble v. Union River Logging R. R. Co., 147 U. S. 165.

(43). And your petitioner submits that in a proper case in which the rights or property of the government is involved in a Federal Court which cannot issue mandamus or injunction to the Attorney-General as aforesaid, any party interested in the performance by the Attorney-General of any duty whereunto he is commanded, and which he neglects or refuses to perform, should have standing of necessity to make suggestions to the Court of the duty of the Attorney-General, so that the

proceedings may conform thereto, or, if not so, then such party should have standing to proceed against any private citizens confederating or co-operating with the Attorney-General to secure the avoidance by him of his duty, and to have such private citizens enjoined.

(44). Your petitioner submits that this should be especially true in the case at bar, because of the express provision of Section 10 of the Act of Congress known as the Thurman Act (May 7, 1878), relating thereto, as follows:

"Sec. 10. That it is hereby made the duty of the Attorney-General of the United States to enforce, by proper proceedings against the several railroad companies respectively or jointly, or against either of them, and others, all the rights of the United States under this act and under the acts hereinbefore mentioned, and under any other act of Congress or right of the United States; and in any suit or proceedings already commenced, or that may be hereafter commenced, against any of said companies, either alone or with other parties, in respect of matters arising under this act, or under the acts or rights hereinbefore mentioned or referred to, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to."

And your petitioner shows that the first of the above-entitled suits is within the provision of said Act, and that there are other proceedings against said Union Pacific Railway Company pending in the second and third of the above-entitled suits, such as may authorize or require the intervention of the Attorney-General therein under the Act aforesaid.

(45). And thereupon your petitioner begs leave to show that said Union Pacific Railway Company, all its property and assets were, in or about the spring or summer of the year 1893, put into the hands of receivers appointed by this Court in the third of the above-entitled suits.

(46). That said company then and for a long time theretofore was and ever since has been insolvent, without money, and unable to pay its indebtedness, and ever since the appointment of said receivers has been out of the operation and control of the said railroad and wholly unable to comply with and has not by itself complied with any of its duties and obligations in respect of the operation thereof, and that all requests, requirements, and demands upon it by itself to perform the same are and ever since the appointment of said receivers have been necessarily and notoriously useless and unavailing.

(47). But your petitioner is ignorant as to whether said Union Pacific Railway Company is in any default to the United States merely for failure to redeem any of said subsidy bonds, or to pay the interest thereon; on a correct application of the theory of accounting apparently adopted by the Supreme Court in the case of The United States vs. Union Pacific Railroad Company, 91 U. S. 72, it is not; but your petitioner submits that if and whatever so in default the remedies to which the United States are entitled and the duties of the executive departments of the Government in respect thereof are as follows:

(48). That is to say, all or the greater part of the road-beds and large tracts of land and all or most of the rights, privileges and franchises of said Union Pacific Railway Company were, by succession, derived from grants made by the United States in said Act of July 1st, 1862, wherein, in the sixth section thereof, it is expressly declared and limited:

"Section 6. And be it further enacted that the grants aforesaid are made upon condition that the said Company shall pay said bonds at maturity."

(49). That further, by the preceding section of the same Act, it was provided:

" * * * and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States."

(50). That after said Act and by the Thurman Act so-called (Act of May 7, 1878, Section 11), it was further expressly enacted as follows:

"Sec. 11. That if either of said railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed, for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced."

(51). Your petitioner begs leave to quote from the argument of the Railroad Company itself as reported in the case of

The United States v. Union Pacific R. R. Co.,
91 U. S., 72.

"We come next to the question of looking to those provisions as to the mode of repayment. At what time, if at all, if the Government may proceed by assumpsit for either bonds or interest, does the Act contemplate that there may be a default in the payment? And we answer that such a default will occur at the maturity of each bond if from the sources thus provided and a statement of the account and the application of the sums earliest due from the Government in the payment of the sums earliest due to the Government, be they principal or interest, any such interest shall be found to be due.

"This results from the fact that there is no provision in this clause for a statement of account by the Secretary of the Treasury every six months."

And again—

"Throughout the charter, the provisions to protect the Government, we submit, are in clear terms either indisputable common law, strict conditions, or a mortgage which is shaped as a strict condition allowing no equity of redemption, but providing a mere summary forfeiture."

(52). The Court practically adopted this construction in that case, and, dwelling upon the fact that a forfeiture would follow any default under the sixth section of the Act of July 1st, 1862, held that there would be default in the repayment of the interest on the subsidy bonds only when the principal matured at which time "there was left for the Government the entire property of the corporation, of which immediate possession could be taken on a declaration of forfeiture. * * * Congress * * * rested satisfied with the entire property of the Company as security for the ultimate payment of the principal and interest of the bonds."

(54). But if any bonds are due and any demand were necessary, your petitioner shows that the Secretary of the Treasury appears to have made it, as alleged by the Attorney-General in his bill, and that at least such bill is itself a demand, and, if maintainable, the prayer thereof for foreclosure sale is idle and futile, since at the farthest in six months from the filing of the same the proceedings thereof must, by explicit command of Congress, be followed or superseded by proceeding to have a forfeiture to the United States judicially enforced.

(55). Your petitioner calls attention to the suggestion filed by the Attorney-General in the third of the above entitled causes as to the extraordinary complications of titles and interests involved in the properties of said Union Pacific Railway Company, and the great length of time and probable litigation necessary to determine the same, and also to the same difficulties as shown in the bills of foreclosure and the answers in both the above entitled causes. And your petitioner submits that more than six months will be required for the ascertainment of what properties and interests may be sold in foreclosure proceedings in either the first or second of

the above causes, and that if the forfeiture to the United States under the Thurman Act is not already complete no sale could be had under any pending foreclosure proceedings until long after it becomes so, when no sale of the absolute property of the United States, without act of Congress can be had at all, and at which time no steps to foreclose, as mentioned in the Act of March 3rd, 1887, on any such property, will be necessary to protect the interest of the United States therein.

(56). Your petitioner admits that there may be doubt as to whether the foregoing forfeiture provision of the Thurman Act does not impair the obligations of the contract, but submits that it is supported by the fifth and sixth sections of the Act of July 1st, 1862, as heretofore construed by the Supreme Court. And further submits that if it does so impair the contract, a foreclosure sale would do so equally or in a greater degree. While if it does not impair the contract and is operative, it cannot now be followed by any immediate foreclosure sale without the substantial destruction of the interest of the United States in the property or proceeds; for the forfeiture includes the franchises, among which is the franchise to be a corporation; so that, after any forfeiture, there can be neither service upon nor judgment against said company in behalf of first mortgage bondholders or the United States, and all suits should abate, as there are no statutes to preserve the existence of the Company, even for winding up purposes. And it is submitted that if a sale were had under such circumstances, good faith on the part of the Government would require the Government to pay the first mortgage bonds out of the proceeds, including the sinking fund, hereinafter mentioned, and to limit any application thereof in its own behalf to such of the subsidy bonds as matured before the debtor was discharged from further obligation by ceasing to exist.

(57). The only remaining remedies of the United States against the properties of the Company are set forth in the fourth section of the Act of March 3, 1887, as follows:

"Sec. 4. That whenever, in the opinion of the President, it shall be deemed necessary to the protection of the interests and the preservation of the security of the United States in respect of its lien, mortgage or other interests in any of the property of any or all of the several companies upon which a lien, mortgage, or other incumbrance, paramount to the right, title or interest of the United States for the same property, or any part of the same, may exist and be then lawfully liable to be enforced, the Secretary of the Treasury shall, under the direction of the President, redeem or otherwise clear off such paramount lien, mortgage or other incumbrance by paying the sums lawfully due in respect thereof out of the Treasury; and the United States shall thereupon become and be subrogated to all rights and securities theretofore pertaining to the debt, mortgage, lien or other incumbrance in respect of which such payment shall have been made. It shall be the duty of the Attorney-General, under the direction of the President, to take all such steps and proceedings, in the courts and otherwise, as shall be needful to redeem such lien, mortgage or other incumbrance, and to protect and defend the rights and interests of the United States in respect of the matters in this section mentioned, and to take steps to foreclose any mortgages or lien of the United States on any such railroad property."

(58). Your petitioner calls attention to facts as follows:

That the general scope of said section and of the section which follows it looks to the acquisition of other liens by the Government, and not to the sale of its own.

It authorizes foreclosure but not foreclosure sale.

That the remedy of the fifth section of the Act of 1862 was defective in that it did not expressly authorize the Secretary of the Treasury to take possession of the telegraph line as well as the railroad line for default.

That the sixth section of the same Act of 1862 could only work a reverter of the property and franchises granted to the Company by the United States, and that the forfeiture in the eleventh section of the Thurman Act was strictly limited to things derived from the United States, notwithstanding the ninth section of the same Act purported to give to the United States a lien upon all the property of the Company without regard to where it came from.

Also to the fact that said Union and Kansas Pacific Railroads had in the meantime constructed and acquired railroad extensions not bond-aided and which were not derived from the United States and upon which Congress had expressly allowed mortgages to be placed by other than the bond-aided companies.

In the light of the foregoing circumstances, the necessity for and limit to the scope of the Act of March 3rd, 1887, fully appear and are in harmony with then existing legislation, especially the Thurman Act, which it did not even purport to alter or amend.

(59). Your petitioner shows that if the Thurman Act is lawful and operative, there cannot be any further steps which, in a legal sense, are necessary to protect and defend any interest of the Government in property already forfeited absolutely to it.

(60. And your petitioner submits that the only liens which the Attorney-General is to foreclose under said Act of March 3rd, 1887, are such as the Government may have acquired and to which it became subrogated as therein contemplated, and such as were imposed in behalf of the United States under the ninth section of the Thurman Act, and which liens rest upon property technically not derived by said Union Pacific Railroad Company directly from the United States, and, therefore, not included in the reverter contemplated in the sixth section of the Act of 1862, or in the eleventh section aforesaid of the Thurman Act.

Your petitioner instances that the only way to extinguish the Union Pacific Railroad Company's interest in the Omaha bridge, and the Kansas Pacific Railway Company's interest in the road from the three hundred and ninety-fourth mile post through to Cheyenne, so that the Government would acquire the same and preserve the continuity and entirety of the road, is either in an

acquisition and a foreclosure of the mortgages which the Government allowed the companies to place upon said properties, or by a foreclosure of the lien in behalf of the United States declared in the Thurman Act as aforesaid; because neither of these properties nor the equity of redemption in them was derived from the United States and would not revert to it for breach of the condition of the sixth section of the Act of 1862 or by forfeiture under the eleventh section of the Thurman Act.

(61). Your petitioner shows that, except as aforesaid, no foreclosure proceedings in behalf of the United States are, in a legal sense, necessary or pertinent to protect and defend the interests of the United States as against the Company; and none whatever to protect the interests of the United States in anything derived by the Company from the United States, and submits that the protection designed to be afforded in said Act is against liability to loss in foreclosure of liens underlying the lien of the Government. These will be presently considered as the principal private obligation of the Union Pacific Railway Company.

SIXTH: OF THE OBLIGATIONS OF SAID BOND-AIDED PACIFIC RAILROAD COMPANIES DUE TO THE GOVERNMENT AS SUCH, AND IN WHICH THE PEOPLE OR ANY OF THEM AS SUCH HAVE NO INTEREST.

(62). This consists simply of the obligation to redeem the subsidy bonds as they mature. It is submitted that the redemption of the bonds would not discharge the companies or the roads from their public and quasi-public servitudes and obligations aforesaid.

PART THIRD.

OF THE PRIVATE INDEBTEDNESS OF SAID PACIFIC RAILROADS, AND MORE ESPECIALLY PERTINENT TO THE RIGHT OF YOUR PETITIONER TO INTERVENE IN THE SECOND OF THE ABOVE-ENTITLED CAUSES.

(63). Your petitioner shows that all the alleged private indebtedness of said Railroad Companies may be classified as follows:

First: The secured indebtedness, consisting of—

(a) First mortgage bonds on the bond-aided roads issued under the Act of July 2, 1864;

(b) Omaha bridge bonds, issued under the Act of February 24, 1871;

(c) First mortgage bonds on the Kansas Pacific Railroad from the three hundred and ninety-fourth mile-post west to Denver, and first mortgage bonds issued on the road from Denver to Cheyenne, both of which issues were authorized under the Act of March 3rd, 1869;

(d) Certain alleged land grant bonds purporting to be secured by mortgages of the lands granted to said companies by the United States and for any mortgage whereof your petitioner is unable to find any authority;

(e) Mortgages and pledges to secure bonds and notes in various trusts, made without any authority of Congress and since said Acts of 1873 and 1878, and which it is submitted were prohibited by said Acts and need not be considered except as several of them appear to have large margins of security, even if the incumbrances are valid;

(f) Guarantees of interest on bonds and dividends on stocks, rentals and the like of other railroad companies, all, as your petitioner is informed and believes, entered into since the Act of 1878 aforesaid, and not in

ordinary course of current business or in good faith and for value;

(g) A current floating indebtedness, not large, incurred in due and ordinary course of business.

Your petitioner shows that the first four classes aforesaid contain all the bonds which, by any possibility, can have any lien on the property of the Union Pacific Railroad Company in priority of the Government's lien.

(64). All the foregoing were issued prior to March 3rd, 1873, on which date an Act of Congress was passed forbidding the Union Pacific Railroad Company from issuing any new stock or making any mortgages or pledges on the property or future earnings of the Company without leave of Congress, except for funding and securing debt then existing or renewals thereof. This disability was not relieved by the consolidation of that Company with the Kansas Pacific Company, even if, after the Thurman Act, that consolidation were lawful.

(65). That the foregoing are also all the mortgages or pledges made prior to the date of said Thurman Act of May 7, 1878, which, in the ninth section thereof declared a lien upon all the property of said Union and Central Pacific Railroads of every description, for the payment of the indebtedness due or to become due to the United States and the payment of the sums required to be paid into the sinking fund, subject only to the provisions that the Act should not be construed as preventing a disposition of the assets in good faith for value in ordinary current business.

(66). Thereupon, in respect of all said private indebtedness, your petitioner submits that in any conflict of interest between the public and quasi-public duties of

the Pacific Railroad Companies and their private obligations, the preservation of the former is of paramount importance.

"The supreme object to be attained," say the Supreme Court (in United States v. Union Pacific Ry. Co., 160 U. S., 1) "was the maintenance and operation of both a railroad and telegraph line from the Missouri River to the Pacific Ocean and governmental aid was extended in order to accomplish a result so important to the whole country."

"We have seen," adds the Court, "that the object of giving governmental aid to the corporations named in the Act of 1862 was to promote the public interest and welfare by the construction and operation of a railroad and telegraph line to the use and benefit of which the Government should be entitled at all times, particularly in times of war, for postal, military, and other purposes."

Even earlier than this and when the United States sought to press its own financial claims and to compel the Company to reimburse the Government for the interest on the subsidy bonds, as the interest matured and was paid by the Government, the Supreme Court in case of The United States v. Union Pacific R. R. Co., 91 U. S., 72, elaborating that such a requirement might cripple the ability of the Company in the performance of its undertaking, said:

"Indeed the whole Act contains unmistakable evidence that if Congress was put to the necessity of accomplishing a great public enterprise through the instrumentality of private corporations, it took care that there should be no misunderstanding about the objects to be accomplished or the motives which influenced its action. If it had been equally explicit in the provisions regarding the bonds to be issued in aid of the road, there would have been no occasion for this suit."

The same Court, when afterwards it sustained the constitutionality of the Thurman Act creating the sinking fund, Union Pacific R. R. Co. v. United States, 99 U. S., 700, said:

"The fund to be created is not so much for the security of the creditors as the ultimate protection of the public and the corporators

* * * It simply gives further assurance of the continued solvency and prosperity of a corporation in which the public are so largely interested."

And, again, in U. S. v. Western Un. Tel. Co., 50 F. R., 42, the Court (Mr. Justice Brewer) say with regard to this point:

"The Government is, it is true, pecuniarily interested as a second mortgagee, but a higher interest is that the administration of its franchises should redound to the general welfare, and not merely to the pecuniary interest of its grantee, or even of itself. The dollar is not always the test of the real interest. It may properly be sacrificed if anything of higher value be thereby attained. But whether the dollar be gained or lost, is not in a matter of this kind a question for the courts. It is for legislative branch, as representative of the popular will, to settle all such questions."

Your petitioner begs leave to show that this is also the understanding of the disinterested Railroad Companies and of Congress and the people. Stuyvesant Fish, President of the Illinois Central Railroad Company, said before the House Committee in February last:

"My endeavor is to put myself as far as I can in the position of the Government. If I stood to-day where the Government stands I would take all the liens on all the bond-aided roads and consolidate them as one thing. That is the best asset the Government has. But the question goes higher. It does not seem to me a question of what the Government can get in money, whether it is $25,000,000 or $45,000,000 or nothing at all. The question is, how can we best carry out the intention of the act of 1862, the act for which those lands were granted and under which those bonds were issued, and in consequence of which railroads were built from the East to the Missouri River—half a dozen of them—and so restore, as best we can, the great broad principle which underlies that act for the benefit of the Government Treasury and the people of the United States in giving them better and cheaper transportation, and putting upon an equal footing all the railroads that reach the Missouri River from the East. You will then have such a volume of business concentrated on the Union Pacific that it will be able to carry freight at a much smaller cost than any other transcontinental line. It will stand somewhat in the position of the Erie Canal and the Great Lakes as a regulator of freights between Chicago and New York. * * * The question I should like to place before the committee, and I have no doubt you have it in your minds, is the importance of taking care of the commercial and shipping interests of that section of the country through which these roads run. There is an opportunity, through reorganization of these roads, perhaps, to stop the waste of capital in building unnecessary parallel lines."

The Senate Committee on Pacific Railroads has by its Chairman, Senator Gear, reported a bill providing for the adjustment of the relations of the road to the United States by a Commission, in which it is said:

"Even if no other considerations existed affecting the subject the Committee would consider an effort at amicable adjustment through and by means of such a commission abundantly justified by the consid-

eration that if a settlement should be made under such a bill there would be secured to all present and future connections of the roads involved the important privileges subject to which any settlement under this act is required to be made, viz., that the companies, if such settlement should be made under the act, and their successors, lessees and assigns should co-operate in making track connections with all railroads of other companies now or hereafter built to points of junction with their bond-aided roads—and that at any point where two or more should connect." Any preference or predjudice for against either should be unlawful. "These privileges could not be acquired as a result of the foreclosure of the paramount mortgage upon the property and the possibility of securing * * * such privileges for all time to come is certainly worth vastly more than an effort to reach" it could cost.

"In any settlement or agreement which might be made with the companies under the authority of Congress, these provisions should be inserted in order to make sure that the roads affected by the settlement were kept open as public highways in the future for the benefit of all present or future railway connections."

In the report of the author of the Commission bill introduced in the House of Representatives in February last with the support of the Committee, it is said:

"If this" (foreclosure) "should occur the most valuable and important part of this great line of railroad across the continent will have passed into other hands without the preservation to the Government of many valuable rights and privileges it now has and which will be retained by it by the passage of this bill."

It does not seem to have occurred to these committees while thus lamenting the loss and deprivation to be sustained in foreclosure either by or against the United States that the Government can be deprived of nothing without its consent and that no bills are necessary to prevent its spoilation of valuable rights and privileges by the Courts without the authority of Congress.

The report of the minority of the same Committee said:

"It should be first noticed that the Attorney-General does not purport to have been guided so much by his duties as the law officer of the Government as he does by his abilities as a trader. His first public announcement of what he had done rested his justification on the guaranteed bid he had secured and the deposit he had obtained. The legal procedure he has instituted as Attorney-General is all ancillary and subordinate to this. But the Attorney-General's authority can not depend upon the price—if he could sell out for $46,000,000, then, equally, he can do so for 46 cents; and his office does not empower him to sell at all.

"But the Attorney-General's procedure in pursuance of the agreement was more in excess of his authority than was the agreement itself-for he did not merely bring foreclosure proceedings in behalf of the Government's lien, but filed his appearance for the United States in the pending foreclosure suit in behalf of the first mortgage bonds, whose holders assert a lien in priority to the lien of the Government, and, as this minority is informed and believes, his bills were actually filed in

this prior foreclosure suit. He does not so much foreclose for the Government as he subjects the Government's interest to foreclosure. For his want of authority to do this, attention is called to a few decisions of the Supreme Court of the United States:

'Without an act of Congress no direct proceedings will lie at the suit of an individual against the United States or its property, and no officer of the Government can waive its privilege in this respect nor lawfully consent that such a suit may be prosecuted so as to bind the Government. (Headnote (in L. Ed.) by Mr. Justice Bradley, who gave the opinion in Carr *v.* United States, 98 U. S., 433.)

'Comptrollers of the Treasurery can not submit the rights of the Government to litigation in any court without some express provision of law. (Case *v.* Terrell, 11 Wall., 199.)

'Claims against and liens upon property of the United States are incapable of enforcement except when such property becomes subject to the control of the court. (The (ship) *Siren* *v.* United States, 7 Wall., 152.)

'Individuals, as well as courts, must take notice of the extent of authority conferred by law upon a person acting in an official capacity. (Hawkins *v.* United States, 96 U. S., 689; Whitsides *v.* United States, 93 U. S., 247.)

'When the property of the Government is concerned it is proper for the attorney for the United States to intervene by way of suggestion, and in such case if the suit be not stayed altogether the court will adjust its judgment according to the rights declared on the part of the Government thus intervening. (Stanley *v.* Schwalby, 147 U. S., 508, 513 and citations; see also 7 Cranch, 116-147, the leading case.)

'When a State or the Government is a necessary party defendant, the court will decline jurisdiction, and the proceedings will be dismissed. (Cunningham *v.* Railroad Company, 109 U. S., 446-451.)'"

It is submitted that the supreme object of the United States in behalf of the Government and the people, in creating this Company and endowing it with fabulous subsidy, cannot be defeated by any private obligations which the Company was allowed to contract, and that the holders of such obligations took them with that understanding. If not, it was sufficiently indicated in the Act of March 3rd, 1873, which declared—

"The laws of the United States providing for proceedings in bankruptcy shall not be held to apply to said corporation."

which were the only proceedings, if any, by which it could be attempted to separate the property from the franchise without making the United States a party.

OF THE FIRST MORTGAGE BONDS ISSUED UNDER AUTHORITY OF SECTION TEN OF THE ACT OF JULY 2, 1864.

(67). Presumably it will not be contended that these bonds could foreclose against and without the consent of the United States, but it may be asserted that the United States have consented, which your petitioner begs leave to consider later.

(68) Your petitioner submits that the first mortgage bonds are not foreclosable under present legislation and especially not against the United States or by foreclosure sale.

That it was not intended they should be, and provision was made which is still sufficient to render it unnecessary, and the Government itself is required to pay them, if necessary, to prevent such foreclosure. The Company is ready, able, and willing, and has offered to pay them if the Government will subordinate its claim to enable the Company to do so. That no mortgage deed was authorized under which foreclosure can be had, but a substitute remedy was afforded.

That especially no such foreclosure is authorized to bar or oust the interests of United States, and no law officer of the Government is authorized to subject those interests to such procedings, and if a foreclosure sale can be had it is not necessary to make the United States a party and bar them, for the property will demonstrably bring more than enough to pay the first mortgage bonds without doing so.

(69). In respect of the foregoing, your petitioner begs leave to point out more in detail as follows:

The Union Pacific was authorized to issue stock for cash at par for the full cost of its road up to one hundred millions, which was more than it cost. That Company and the Kansas Pacific were loaned thirty-three millions of six per cent. Government bonds for thirty years, without paying current interest, and were given outright a

land grant thought to be worth as much as the bonds, and then they were allowed to issue their first mortgage bonds which in some instances, especially in the case of the Sioux City and Pacific Company, were, all of them, distributed as a dividend to the stockholders for nothing.

(70). Your petitioner shows that the resources aforesaid are still ample. There are about sixty-one millions outstanding stock of the consolidated Union Pacific Railway Company, whose constituents received for stock issued not one hundred per cent. of the par thereof in money, as required by the Acts aforesaid, but, as your petitioner is informed and believes, only sixteen per cent. thereof.

That when the Government was advised that the stock had not been paid for, Congress passed the Act of March 3rd, 1873, by which the Attorney-General was directed to bring suit against certain of the stockholders therein described to recover the unpaid stock subscriptions for the benefit of the Company, which he did, and apparently failed to maintain it, only because the proceedings were premature, as the Company at that time was not in default to the United States, and objected to the suit. The United States v. The Union Pacific Railroad Company, 98 U. S., 569.

Such suit is now maintainable, and, in addition to that, the Company is insolvent, and in the hands of receivers, who may be directed by this Court to bring like suits in behalf of creditors, whether the Company consents or not. The unpaid eighty-four per centum on said capital stock of $61,000,000 should yield if collectible nearly twice the amount of said first mortgage bonds.

(71). Your petitioner shows that, for the purpose of protecting and doing complete justice to the first mortgage bondholders of said Union Pacific Railway Company, said Act of July 2nd, 1864, gave to such bonds a

first lien upon the roads, property, and equipment of the companies respectively issuing said bonds, to which the lien of the United States should be subordinated.

(72). That the prior Act of July 1st, 1862, did not contemplate any first mortgage bonds, and under Sectio 6 thereof all compensation for services rendered for the Government was to be applied to the payment of subsidy bonds; but when said first mortgage bonds were authorized, said prior Act was modified by Section 5 of said Act of July 2nd, 1864, so that only one-half of said Goverernment compensation was to be retained by the Government and so applied, whereby relief was afforded to said companies to enable them to meet the interest to accrue on said first mortgage bonds.

(73). That by Section 2 of the Act of 1878 (the Thurman Act), the right of the Government to retain the whole of said compensation was restored, and said companies were required to supplement the same with the payment of certain other sums until the whole should equal twenty-five per centum of the net earnings of said companies respectively; but again, for the relief of said companies, in view of their obligations on first mortgage bonds, it was provided, in Section 2nd of said Thurman Act, that net earnings should not include interest paid on first mortgage bonds, but should be ascertained after deducting such interest.

(74). And further, for the protection of such first mortgage bondholders, Section 5 of said Thurman Act made it the duty of the Secretary of the Treasury to remit so much of all compensation to be retained by the Government, or other moneys to be paid to the Government, by said companies as should be necessary to enable said companies, according to the terms of said Act, to pay interest on its said first mortgage bonds.

It was held by a divided Court in Union Pacific Railroad Co. v. United States, 99 U. S., 402, that the five per cent. of net earnings reserved under the Act of July 1st, 1862, was, by the Act of July 2nd, 1864, subordinated to the payment of interest on the first mortgage bonds.

(75). And finally, in Section 3 of the Thurman Act, a sinking fund was created to be made up in whole or in part of the additional half of compensation for Government services, which said Act allowed the Government to retain, on which fund thus to be accumulated the first mortgage bondholders were, by Section 8 of said Act, given a first lien for the payment of the principal thereof, according to their rights in the premises.

(76). In addition to the foregoing, your petitioner shows that the present value of so much of the sinking fund aforesaid as pertains to the Union Pacific Railway Company, and on which the first mortgage bonds have a first lien, is over seventeen million dollars, which is considerably more than the whole amount of said first mortgage bonds of said company that have as yet matured and, if applied to the payment of such bonds and others as they mature, would cancel all default in respect thereof and leave only about an equal amount outstanding, which said fund, if continued, should also speedily extinguish under the consequent constantly reducing interest charge thereon.

(77). And your petitioner says that a reorganization committee, representing the stockholders of said company, offered in their behalf to committees of the last Congress, as hereinafter mentioned, to pay off the balance of said first mortgage bonds, if the sinking fund could be applied thereto, and if the United States would extend its own claims and reduce the interest thereon,

which your petitioner submits the United States, under its subordinated lien, should do if the United States do not themselves pay off said first mortgage bonds.

(78). By the Act known as the Act of March 3, 1887, the Secretary of the Treasury was authorized to invest the sinking fund in purchases of these same first mortgage bonds, which constituted a lien upon it. The Act further contemplated that if such bonds were outstanding, they might endanger the security of the United States, and that the President should direct the Secretary of the Treasury to purchase and the Attorney-General to take all steps and proceedings needful to redeem the same, which, as hereinbefore shown, included more than first mortgage bonds on bond-subsidized portions of the road, and covered road over which the Government had no lien, except under the Thurman Act, and on which first mortgage bonds, therefore, could foreclose. From all of which it is submitted an intention appears on the part of the United States to protect the lien at least of said first mortgage bonds.

(79). No mortgage deed to secure said bonds was authorized. Your petitioner shows that the Government's lien was created by the Act of July 1st, 1862, and was merely subordinated to the lien of the first mortgage bonds authorized to be issued under the Act of July 2nd, 1864, which Act, as against the United States, is to be strictly construed and did not authorize the making of any mortgages as security for said first mortgage bonds, but made said bonds themselves in the issuance thereof ipso facto liens upon the property, just like the lien of the Government for the subsidy bonds, which was subordinated thereto.

(80). The Act of 1862 in respect of the lien of the Government bonds is as follows:

"The issue of said bonds and delivery to the company shall ipso facto constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds may be issued."

And the amendment of 1864, authorizing the first mortgage bonds, is as follows:

"Sec. 10. AND BE IT FURTHER ENACTED, That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company and any other company authorized to participate in the construction of said road, may, on the completion of each section of said road, as provided in this act and the act to which this act is an amendment, issue their first mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property and equipments."

(81). It is submitted that the word "tenor," when used of the two series of bonds, means that they are to be of contemporaneous issue and to have the same kind of a hold or tenor on the property, and that there was no more right to make a mortgage to secure the first bonds than to require one to secure the seconds.

The Supreme Court in Union Pacific R. R. Co. v. United States, 99 U. S., 402, say:

"It may perhaps be urged that the first mortgage bondholders have no lien on the net earnings, but they have the same lien that the Government has Both liens are co-extensive with the whole property of the company, so far at least as relates to the railroad and telegraph lines and their equipment, and all property appurtenant thereto."

That the word "mortgage" does not imply that any such instrument is to be made; for it is used of both liens in the acts quoted above and in the Act of March 3rd, 1887, and constantly by the Supreme Court in the decisions herein cited.

(82). That it could not have intended that the company was to make a real estate mortgage of the railroad,

appears for several reasons. The Company had no evidence of title in the form of any conveyance to itself. No patents were to issue to the company for the strip of land constituting the location, but only for the lands on each side of it (Act July 1st, 1862, Sect. 4). The right of way was granted as an easement by the Act of 1862.

When the bonds began to issue it was impossible to know for several years where the complete location should be or how much road, and where to end, each company could build. Nothing could be described so as to be identified in a mortgage, at least there was no authority to describe anything in a mortgage. Besides, it was expected that the bonds would be issued in small lots extending over a period of thirteen years, with consequent different dates of maturity, and as was contended in United States v. Union Pacific R. R. Co., 91 U. S., 72, failure to pay each bond constitutes a separate and independent default. Especially was no mortgage authorized which should contain a power of sale, or which, by strict foreclosure, should bar the right of the United States to redeem, or which by any possibility could defeat the purpose of the Government in aiding said road. The companies were allowed to issue the bonds one hundred miles in advance of construction, and the Act contemplated (Sec. 17, Act 1862) that on a failure of the companies to complete the road, the United States should take possession and complete it, which purpose was a part of the security of said bonds and was inconsistent with the foreclosure of any mortgage in their behalf that could prevent such completion, and such mortgage and foreclosure are equally inconsistent with the present right of the United States to take possession of the roads and devote their whole income to putting any part of either of them in repair.

(83). That though the existence of alleged mortgages to secure the first mortgage bonds was noticed in

the preamble of the Thurman Act, yet in the same paragraphs the lien of the bonds was mentioned as limited to the provisions of the acts aforesaid.

(84). That such mortgages, especially if containing any power of sale would be wholly inconsistent with the reverters and forfeitures and other remedies reserved and secured to the United States, and, with the public and private duties imposed upon said company and as conveyances, conditional or otherwise, were ultra vires.

That if any such mortages have been made which do not vary the statutory lien of said bonds, they were wholly unnecessary and not intended; and if they do not vary it, they are wholly unauthorized.

(85). The Act of July 2nd, 1864, gave to said first mortgage bonds no lien on any of the rights, privileges, and franchises of said Union Pacific Railway Company or its predecessors, but only upon the roads, property, and equipment of said companies, which properties are only appurtenant to the franchises. The servitudes imposed upon said properties in behalf of the United States and the public were not subordinated to the lien of said mortgage bonds.

(86). That such mortgages, in the absence of any statutory or contract provisions for the foreclosure, and on a road running through States and Territories which were to become States, all with different railroad and mortgage laws, was more like what is known in England as a mortgage of the "undertaking," and that the security therefor to be of the same tenor as that of the United States requires that, in the event of default in the payment of any of said bonds, the holders thereof should, as a contract right, be entitled to have some trustee or trustees appointed for them by the Court, with the same powers that were conferred upon the Secretary of the

Treasury when there should be default in the payment of the subsidy bonds as set forth in Section 5 of said Act of 1862; that is to say, with power to take possession not only of everything covered by their lien, to-wit, "the respective roads, property, and equipment" of said companies (Sec. 10, Act of 1864), but also "with all the rights, functions, immunities, and appurtenances thereunto belonging." (Sec. 5, Act 1862). Not otherwise, it is submitted, can the mortgaged property be operated for the benefit of said first mortgage bondholders and the lien of the United States completely subordinated to the prior lien of the same tenor. And such trustee, so to be appointed, should be required to operate said road just as the present receivers are now doing, and to devote the whole income to the payment of the interest as it accrues and to the principal as it matures on each of said first mortgage bonds not paid by the sinking fund. And the right of the United States to forfeiture, foreclosure, or reverter, or to retain compensation for services, or any part of the earnings, should be subordinated thereto. Such remedy as this,—the right to its full earning capacity, is all that any creditor or owner can get out of any quasi-public corporation which the public has a right to have operated, and especially is it all that the safety and declared purposes of the Government can permit to any mortgagee or creditor of this road.

(87). But your petitioner submits that, even if the lien of said first mortgage bonds may be enforced against the companies by strict foreclosure, such proceedings could not bar the United States. Presumably every taker of the bonds was aware of the law as a fact that the United States cannot be sued, nor can their properties be attacked by judicial proceedings without their express consent by act of Congress; and, as herein elsewhere shown, no law officer of the Government can sub-

ject its property to such proceedings without like authority. If the first mortgage bondholders have a right, they have no remedy, and the court cannot give to them a remedy against the Government.

(88). Your petitioner further shows that it would not be necessary to make the United States a party and bar it in order to have the sale yield more than sufficient to pay the first mortgage bonds, for that nearly all of said bonds are held or controlled by a Reorganization Committee, hereinafter mentioned, which has also assembled substantially all the stock of said company, and, as your petitioner is informed and believes, has instituted or caused to be instituted or has adopted foreclosure proceedings pending in this Court in behalf of the lien securing said bonds, and has agreed with the Attorney-General to bid about forty-six millions for the lien of the United States on said Union Pacific Railway and sinking fund in any foreclosure sale in said proceedings, so that a great value in said property above the lien of the first mortgage bonds demonstrably exists and from which it is necessarily inferred that, in any foreclosure sale in behalf of the first mortgage bonds, an amount far in excess of the sum required to pay any balance of first mortgage bonds would be realized without making the United States a party or cutting off its interest. The purchase price would be almost inevitably the amount of said first mortgage bonds and would be paid in a surrender and cancellation thereof; it would not be much if anything more, since the surplus would go to the United States, whose right to redeem would not be cut off and it would not be much, if anything, less, for fear that the Government might redeem from the purchaser without paying the balance of the bonds. This would release the sinking fund to the United States.

(89). The rights of the United States as such would then be only the powers, coupled with an interest, hereinbefore set forth, and the right to redeem. The purchaser would be secure; he could only be disturbed by the repayment of his money with six per cent. interest, and, in the meantime, would enjoy the whole use and income of the property, subject only to the powers coupled with interests aforesaid and the rights of the public therein as they have heretofore existed, and as it was designed they should be perpetuated.

(90). So well understood does this appear to be that the defaulted first mortgage bonds continue to be worth about par on the market, in so far as there are any for sale, and the Reorganization Committee aforesaid is glad to secure a continued payment of the interest upon such as are submitted to their control; and in their scheme of reorganization they propose that such bonds shall carry a large premium in new securities, while the stock of said company, though subject to an assessment, has a substantial market value because of the expectation that an interest, representative thereof, in the form of new stocks, will survive all anticipated foreclosures whatsoever.

(91). Wherefore, in all and singular the foregoing, your petitioner submits that no foreclosure sale in behalf of said first mortgage bonds is lawful or necessary; and that especially is there no authority in law and no necessity for making the United States a party to proceedings therefor.

Your petitioner asks but little consideration of the remaining private obligations of the Company as above classified. The petitioner finds no authority for the

making of the land grant mortgages, and they seem to be inconsistent with the reverter secured to the United States and to the rights which the public were to have to enter upon all said lands which should not be disposed of within three years, at substantially Government rates or prices. The objection to the making of any such mortgage before the location of the road was determined and the length of it, and what lands therefore should appertain to the respective companies, forbade any mortgage until the roads should be completed, and it was not contemplated that this would be accomplished in less than thirteen years, while at the end of three years the lands were to be open to entry as aforesaid, and were subject to forfeiture and reverter if the road should not be completed by the Company.

(92). It is submitted that the idea of a mortgage on the land is almost as inconsistent with the dominant idea of the whole enterprise as any specific mortgage on the railroad to secure the first mortgage bonds would be. But in this connection, your petitioner begs leave to call attention to an important fact, that the consolidated mortgage covering the Kansas Pacific road from the 394th mile-post west by way of Denver to Cheyenne appears to be also secured by substantially all the outstanding bonds on the Denver Extension and the Cheyenne Division and by substantially all of the Income Bonds on the Eastern and Middle Division of the Kansas Pacific. The Income Bonds, though unauthorized by any express legislation, were yet prior in date to the prohibitory act against further issues of bonds of March 3rd, 1873, and the Consolidated Mortgage, though subsequent to that Act, was made by the Kansas Pacific Company which was not included in said prohibitory act.

In 1878 the Thurman Act was passed, which practically forbade the Company from incurring liability, except for value, in good faith, and the ordinary course of current business; and the consolidation of the Union and Kansas Pacific, if lawful at all, did not take place till 1880, and presumably the Union Pacific did not assume any obligations of the Kansas Pacific by such consolidation.

(93). But in the worst aspect, and assuming that the Kansas Pacific could mortgage its lands under the consolidated mortgage, the estimated value of that land is nearly sufficient to pay the outstanding bonds, of about eleven millions, thereby secured, and thereby to release for cancellation the first mortgage on the Denver Extension and Cheyenne Division, and all the Income Bonds too for cancellation, thus preserving the entirety and continuity of the road as contemplated without imposing any further burdensome charge upon the Government in assuming said bonds.

(94). The authorized Omaha bridge bonds outstanding are not considerable. Besides, several of the collateral trusts of the company, to which, even if lawful, the lien of the Thurman Act should attach, afford margins of value for discharging the indebtedness secured.

(95). The remaining floating indebtedness to be noticed is divisible into two classes: One represents guarantees of dividends on stocks and interest on bonds of other railroads to an amount which it is said is the sole cause of the bankruptcy and insolvency of the Union Pacific Company, and, it is claimed, necessitates a foreclosure and a wiping out of the present Company to avoid these liabilities. The answer to which, your petitioner

submits, is that all such undertakings are in direct violation of the restrictions imposed by the Thurman Act, and are presumably utterly void. Such obligations, therefore, of the Union Pacific Railway Company offer no reason nor necessity for any foreclosure or other extinction of that Company.

(96). The remaining floating debt, unsecured, incurred in lawful course of current business, is not large. It has no legal protection, since it will be wiped out without recompense in any forfeiture or foreclosure. Its payment, therefore, may be postponed, but it is entitled to consideration more than are the stockholders in reorganization schemes to be had in pursuance of foreclosure.

PART FOUR.

OF THE RIGHTS OF THE UNION PACIFIC RAILWAY COMPANY ESPECIALLY PERTINENT TO YOUR PETITIONER'S RIGHT TO INTERVENE IN THE THIRD OF THE ABOVE ENTITLED SUITS.

(97). Your petitioner shows that said Union Pacific Railway Company, its constituents and predecessors, were endowed with certain peculiar and inalienable privileges and immunities to enable it to perform its obligations to the United States and to the public, as hereinbefore set forth.

(98). Your petitioner submits that said Company, having accepted the acts of Congress aforesaid, undertook to perform the duties thereby imposed upon it, and that it should protect and defend its ability to do so and that under said act known as that of March 3rd, 1873, as construed by the Supreme Court of the United States in the case of Union Pacific Railroad Company v. Hall,

91 U. S., 343, your petitioner is entitled to the writ of mandamus from this Court to compel said Union Pacific Railroad Company to operate its said railroad as required by law, which your petitioner submits requires said Company to defend according to its rights against foreclosure in the above entitled suits, to the end that your petitioner's rights and interests therein as hereinbefore set forth may be preserved.

(99). But your petitioner further says that nearly all of the stock of said corporation has been assembled by the Reorganization Committee aforesaid, which Committee has also assembled nearly all the first mortgage bonds for the purpose, among others and as hereinafter charged, of instituting or causing to be instituted foreclosure proceedings in behalf of said first mortgage bonds, and in which all junior liens and interests shall be wiped out and all the floating debts and contracts, all the duties to the United States and to the public, and all the rights and immunities of said company; and that in pursuance thereof there shall be a reorganization in which all the properties of said Union Pacific Railway Company shall be vested in a new corporation, freed from all obligations hereinbefore set forth, pertaining to said Union Pacific Railway Company, and in which new corporation the owners of the stock of the present company so assembled by said Committee shall have new stock.

(100). That said Committee have thus and otherwise, as your petitioner is informed and believes, acquired control of said Union Pacific Railway Company, its officers and directorate, whereby said company is made to cooperate in the purposes of said Reorganization Committee, and to that end abandon all defence of its rights, privileges, franchises, and immunities in the premises.

(101). Wherefore, as well as because of your petitioner's rights to the writ of mandamus, your petitioner

as standing herein to make defence for said company or to compel said company to make defence for itself of its rights, powers, properties, and immunities so that it may perform its duties aforesaid and that the interests of your petitioner may be protected.

(102). Your petitioner submits that the faith of the United States is pledged to the Union Pacific Railway Company and to the public neither themselves to foreclose by sale, nor to permit any foreclosure and extinction of that Company by or in behalf of first mortgage bonds.

(103). Your petitioner submits that under a comprehensive construction of the Acts of Congress hereinbefore referred to, the United States occupy a twofold relation to said Pacific Railroad Companies which were created and aided as aforesaid; one in which, as sovereign, the Government holds in trust the obligations of said Companies to perform and to maintain their ability to perform their duties to the public as well as to the United States, and the other relation in which the United States are simply a contract creditor.

(104). The constitutionality of the Thurman Act, which took vast sums of money from this Company for sinking fund purposes, was put upon the following grounds in the opinion of the Supreme Court in Union Pacific R. R. Co. v. U. S., 99 U. S., 700:

"The United States occupy towards this Corporation a twofold relation: that of sovereign and that of creditor. U. S. v. R. R. Co. (ante-143.

"Out of regard to the rights of the subsequent lienholders and stockholders, it is not only their right, but their duty, as sovereign to see to it that the current stockholders do not, in the administration of the affairs of the Corporation, appropriate to their own use that which in equity belongs to others.

"The fund to be created is not so much for the security of the creditors as the ultimate protection of the public and the corporators.

"To our minds it is a matter of no consequence that the Secretary of the Treasury is made the sinking fund agent and the Treasury of the

United States the depository, or that the investment is to be made in the public funds of the United States.

"Neither is it a fatal objection that the half of the earnings for services rendered the Government, which by the Act of 1864 was to be paid to the Companies, is put into this fund. The Government is not released from the payment. While the money is retained, it is only that it may be put into the fund, which, although kept in the Treasury, is owned by the Company.

"It simply gives further assurance of the continued solvency and prosperity of a corporation in which the public are so largely interested, and adds another guaranty to the permanent and lasting value of its vast amount of securities."

(105). That Act took the moneys which belonged to the Railroad Company and withheld the moneys due from the United States to the Railroad Company, and invested them at high premiums in securities of the United States, bearing a low rate of interest, which were continually shrinking as they approached maturity; and thus in the end the Act bankrupts the Union Pacific in the payment of its first mortgage bonds; for the fund is more than sufficient to pay every first mortgage bond that has matured; and that if the Government had credited the Company with the same interest on the fund which the Government was charging the Company on its own bonds, and the same rate the Company was paying on its first mortgage bonds, the fund should be about sufficient to pay all of the latter bonds as they mature. It is submitted that the United States cannot refuse to pay the bonds while that money lasts, nor can its officers conspire with the first mortgage bondholders in a foreclosure for the non-payment.

(106). In addition to that, the Thurman Act created out of whole cloth a lien upon all of the property of the Union Pacific Railroad of every description and from whatever source derived, and then declared the road a bankrupt and published the law that nobody should trust it except in due course of current business.

(107). Before that, by the Act of March 3rd, 1873, the United States forbade the Company from issuing any more stock, though it was not nearly up to its authorized limit and never has been; and also forbade it from issuing any new securities whatever, except in renewal of existing obligations. Under these conditions, bankruptcy would seem to be inevitable however much money the Company might earn or however much its property enhance in value.

It has been a common thing for the United States from time to time to direct the withholding of other moneys due from the Departments to the railroad companies, and of imposing onerous duties upon the companies without compensation, and directing the companies to sue if they objected. (See Act March 3, 1875. Act of April 30, 1878.)

(108). Your petitioner submits that it is manifest that the Government desired to avoid the construction or operation of the roads as a governmental foreclosure, but did desire to have them constructed and operated for use of the Government, especially in time of war, and to promote the public welfare at all times by agencies over which the Government should retain complete control.

(109). In addition to the foregoing acts of sovereign protection, your petitioner begs leave to cite that the Government has appointed meetings of the stockholders of the Union Pacific and ordered them to elect directors (Act of April 10, 1869.) It has appointed boards of eminent citizens to examine the condition of the road and compelled the companies to pay ten dollars a day to each member. It has authorized the Attorney-General to demand and receive security from the Union Pacific Company for the building of its road, and for the same purpose has required the President to withhold the sub-

sidy bonds to which the companies were entitled (same Act.) It has authorized the Secretary of the Treasury to examine the book records and correspondence, and all other documents of the Union Pacific Company, at will. (Act of March 3, 1873.) It has expressly legislated the Company and its creditors outside of the pale and remedies of the bankrupt law and forbade the Company to pay dividends (same Act). It has created new offices like that of Auditor of Railroad Accounts (Act June 19, 1878), afterwards called Commissioner of Railroads, to exercise a supervision over said Railroad Company, and to require from it further reports and statements of its conditions and operations. It has directed investigations to see if the Company has committed penal offences or become subject to punishment and forfeiture (Act of April 12th, 1869.) It has released it from building telegraph lines as a matter of contract, and has imposed such building without consideration under its reserved sovereign powers in behalf of the Government and the people (United States v. Union Pacific R. R. Co., 160 U. S. 1). It has enacted special criminal legislation applicable only to the directors, officers, and agents of these companies to prevent the use by the companies of their own funds, and to compel them to perform the special duties, secured to the public, and has imposed punitive damages upon the Company for violation (Thurman Act, Sec. 6, Act of June 20, 1874). And it has given to every citizen of the Republic, whether he has any interest or not (Union Pacific R. R. Co. v Hall, 91 U S, 343), a right to a writ of mandamus in any Federal Court having jurisdiction to compel the Company to operate its road as required by law (Act March 3d, 1873), and from the beginning it reserved to itself the power of life and death over the Company to secure the road to itself in time of war and to promote the public welfare.

(110). Your petitioner begs leave to incorporate, as statement herein, and to show that there cannot be a sale of said railroads to companies or to men who are under no special obligation to the Government or the people, the decision of the Supreme Court in the recent case of—

United States v. Union Pacific Ry. Co., 160 U. S., 1.

"In our judgment, it is not difficult to ascertain the intention of Congress in passing the acts of July 1, 1862, and the amendatory act of July 2, 1864, Chap. 216. The supreme object to be attained was the maintenance and operation of both a railroad and telegraph line from the Missouri River to the Pacific Ocean, and governmental aid was extended in order to accomplish a result so important to the whole country."

(After epitomizing the first 18 sections) "These and other provisions are wholly inconsistent with the idea that the Union Pacific Railroad Company could have fulfilled its obligations to the government by simply constructing a railroad, without making any provision whatever for the construction, maintenance or operation of a telegraph line, thereby leaving all communication by telegraph along its route to the absolute control of private corporations deriving no corporate authority from the national government, and whose operations would not ordinarily be subjected to national supervision."

"We have seen that the object of giving governmental aid to the corporations named in the act of 1862 was to promote the public interest and welfare by the construction and operation of a railroad and telegraph line, to the use and benefit of which the government should be entitled at all times, particularly in the time of war, for postal, military and other purposes.

"In this view it must be held that by its reservation of authority to add to, alter, amend or repeal the act in question, whenever it choose so to do, Congress, subject to the limitation that rights actually vested or transactions fully consummated could not be disturbed, intended to keep within its control the entire subject of railroad and telegraphic communication between the Missouri river and the Pacific ocean, through the agency of corporations created by it, or that had accepted the bounty of the Government. It was never intended that the railroad companies accepting such bounties should be able, by any contract or arrangement with telegraph companies, to discharge themselves, for all time and beyond the authority of Congress otherwise to provide, from the obligation to exercise, by their officers and agents exclusively, the telegraphic franchises received by them from the national government

"It was suggested in argument that the objects of the acts of 1862 could be fully accomplished by means of a telegraph company incorporated by one of the States, and which, by placing its lines on the route of the railroad, could meet all the demands, as well of the railroad company as of the government and the general public. But this suggestion can have no weight in the present inquiry. For if, as intimated, the execution of the act of 1888 will result in no real good to the general public, and may even be injurious to the pecuniary interests which the government has in the Union Pacific Railway and its branches, that is a ques-

tion of public policy, with which the judiciary is not concerned, and the responsibility for which is with another branch of the government."

"We perceive no escape from the conclusion that it is entirely competent for Congress to add to, alter, or amend the acts of 1862 and 1864, so as to require the Union Pacific Railway Company, possessing the rights and powers of its constituent companies to maintain and operate, by and through its own officers and employees, telegraph lines for railroad, governmental, commercial, and other purposes, and to exercise, itself and alone, all the telegraph franchises conferred upon it. It is enjoying the bounty of the government subject to the condition, among others, that it will perform these duties whenever so required by Congress.

"The purposes of the 4th section of the Idaho act is quite apparent. Its effect was, as we have heretofore said, to relieve each of the railroad companies named in the act of 1862 from any present obligation to construct a telegraph line on its roadway, by means of an 'arrangement' with the United States Telegraph Company for the construction of such a line. But no arrangement could be legally made under that act which tended in any degree to defeat the great objects of the acts of 1862, and the act amendatory thereof, of July 2, 1864, Chap. 216. The act of 1862 did not authorize the railroad company to agree that it would not itself, at some future time, construct and operate a telegraph line for the use of the government and the people. Nor did it, by terms or implication, repeal or modify the clause in that act by which Congress expressly reserved the power to add to, alter, amend, or repeal, the latter act, having due regard to the rights of the railway companies named in it. Certainly it could never be held that a due regard to the rights of either the railroad company or of any corporation claiming under it required that the government, charged by the Constitution with the duty of regulating interstate commerce, should permit the railroad company receiving national aid to invest a corporation, not deriving its authority from the United States, with the exclusive right to enjoy its roadway—a national highway—for purposes of telegraphic communication between the States."

(111). Your petitioner shows that there are apparently but two places in all the legislation of Congress touching the premises, in which it is contemplated that any other companies than those herein referred to might come into possession of said road.

(112). In the last part of the 15th Section of the Act of July 1st, 1862, already hereinbefore quoted as the principal enactment on which this petitioner relies for standing, it is said:—

"Wherever the word Company is used in this act, it shall be construed to embrace the words, their associates, successors, and assigns, the same as if the words had been properly added thereto."

(113). These words in a conveyance to a quasi-public corporation simply limit the estate but do not authorize

a transfer of it. Except this, and as stated in the next section which authorizes the consolidation of any two or more of the companies mentioned in the Act, successors and assigns are not contemplated in the Act. It is submitted that while such consolidation is the only succession authorized (and there can be none without the authority of the creating sovereign), it is also the only succession contemplated. Otherwise, by the express terms of the Act, the successor would have to assume not only all the public and quasi-public duties, but the first mortgage bond and subsidy indebtedness to the United States too, which pertained to and bankrupted its predecessor.

(114). The other place is Section 6 of the Act of June 19th, 1878, which created the office of Auditor of Railroad Accounts, and required the bond-aided roads to make reports to him, and said:

"This act shall apply to any and all persons or corporations into whose hands either of said railroads may lawfully come, as well as to the original companies,"

which it is submitted was limited to the only "lawful" succession then authorized, that arising from consolidations between the companies themselves.

(115). Your petitioner begs leave to emphasize that there are but three possible or authorized destinies for this road under the law as it exists which can secure "the supreme objects to be attained" in its creation, and they embrace all the right to succession with which the sovereign creator of the Union Pacific Company endowed it.

First: Its own perpetual existence;

Second: Consolidation with any of the other bond-aided roads that were subject to like duties; and

Third: Forfeiture to the United States.

(116). These are all that, according to the title of the Act can "secure to the Government * * * for postal and military purposes * * * a railroad * * *

from the Missouri River to the Pacific Ocean," and according to the Act that "the whole line * * shall be operated * * so far as the public and government are concerned * * * as one connected continuous line," and always subject to this:—

"And the better to accomplish the objects of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend or repeal this act." Sec. 18, Act July 1, 1862.

(117). Your petitioner shows that forfeiture to the United States, even if insisted upon, would not be so hard upon and disastrous to the companies as foreclosure sales and said bond-aided companies are or should be equally interested in opposing any sale in the premises. By existing laws, the Secretary of the Treasury is empowered upon certain conditions to compromise any claims due to the United States.

Rev. Stat. U. S., Sec. 3469.

And very likely would be glad to do so but without relieving the companies of their public and quasi-public duties which were the supreme objects to be attained in their creation.

By still other laws, the Solicitor of the Treasury has charge of all lands or other property which may come into the possession of the United States for the payment of debts.

And when real estate becomes the property of the United States in payment of debt, and the debt is afterwards paid, the Solicitor of the Treasury may release said real estate to the debtor, which would probably apply to the payment of a compromise sum.

Rev. Stat. United States, Sections 3750-3751.

These provisions constitute a valuable right and interest to said Pacific Railroad Companies, which should not be taken away or impaired by foreclosure.

(118). Your petitioner begs leave to call the attention of the court to the fact that the period of the receivership herein has been the most depressing and disastrous to railroad enterprise and business of any that has been known, and that there is strong reason for believing that, with a return to normal times and business, said Union Pacific Railway Company, under careful management, can discharge all of its just obligations.

(119). Wherefore, for all and singular the foregoing, your petitioner submits that not a single interest in the premises appears whose just rights cannot be better served by a discharge of these procedings and a recommitment of the properties involved to said Union Pacific Railway Company under such prudent safeguards and supervision as this Court may see fit to impose, until the sinking fund aforesaid shall, if ever, be insufficient to meet said first mortgage bonds as they mature, or until the United States may take possession under its rights aforesaid, than by wrecking said company in any proceedings of sale in foreclosure; and that the design and effect of any such sale is and will be the sacrifice to a greater or less extent of every other interest involved, both public and private, for the inordinate benefit and enhancement in reorganization of certain selected securities held or controlled by a volunteer Reorganization Committee, formed, as your petitioner is informed and believes, to realize unmerited gains out of the loss and distress to be sustained and borne by the United States and the public and by private interests not taken care of in such contemplated proceedings.

PART FIFTH.

THE COMPLAINT.

(120). Your petitioner, relying upon its rights and interests and the rights, powers, and interests of the

United States and the Congress thereof and the powers and duties of the President and other officers of the United States and the rights and duties of the Union Pacific Railway Company, its constituents and predecessors in the premises, and showing that any foreclosure except by and in behalf of the United States, and that all foreclosure sales of said railroad would be in derogation thereof, repugnant thereto, and unauthorized, says and complains:—

(121). That said Union Pacific Railroad Company received subsidy bonds under the acts aforesaid to the amount of $27,236,512 in the par value thereof, and issued its first mortgage bonds to the amount in the par value thereof of $27,229,000, and purported to make a mortgage to secure the same to one Edwin D. Morgan and one Oakes Ames, as trustees, both of whom, since deceased, have been succeeded in said alleged trust by one F. Godron Dexter and one Oliver Ames, Second, and by which alleged mortgage said Union Pacific Railroad Company purports to have conveyed to said trustees, as your petitioner is informed and believes, all and singular its said railroad and telegraph line and all its real and personal estate, franchises, and property then owned or thereafter to be acquired by said railroad company, all on condition that for six months' default said trustees may take and operate said railroad on the request of a majority of the defaulted bonds and for one year's default may sell all of said mortgaged premises at auction on the request of a majority and for the payment of all said outstanding bonds regardless as to whether all shall have matured or not. But said mortgage does not purport to authorize any foreclosure by judicial proceeding against the United States or anybody else and does not purport to warrant any bar, but expressly preserves the right of redemption upon the payment at any time of the indebtedness thereby secured.

(122). And your petitioner says that the predecessors of said Kansas Pacific Railway Company received subsidy bonds under the acts aforesaid to the amount in the par value thereof of $6,303,000, and as your petitioner is informed and believes that one Henry M. Alexander and one John F. Dillon claim to be mortgage trustees under one mortgage, and said Dillon and one John A. Stewart claim to be mortgage trustees under another mortgage made by the predecessors of said Kansas Pacific Railway Company to secure an issue of alleged first mortgage bonds of said predecessors to the amount in the par value thereof of $6,303,000 and the above-named trustees claim, as your petitioner is informed and believes, that said alleged mortgages constitute liens upon the same property covered by, and that they are prior to, the lien of said $6,303,000 subsidy bonds aforesaid; that Russell Sage and George J. Gould claim to be trustees under another mortgage dated May 1st, 1879, which purports to be secured by certain lands and, among others, by substantially all the first mortgage bonds (not in sinking funds) on the Kansas Pacific road from the 394th mile post west by way of Denver to Cheyenne.

(123). That afterwards and after said Union Pacific Railway Company and the properties thereof had been put into the hands of receivers, as hereinbefore set forth, a certain association was formed under the name of the Reorganization Committee of the Union Pacific Railway Company, composed of Louis Fitzgerald (chairman), Jacob H. Schiff, and Chauncey M. Depew, all, as your petitioner is informed and believes, of the city, county and State of New York and citizens of said State, T. Jefferson Coolidge, Jr., and Oliver Ames, second, both, as your petitioner is informed and believes, of Boston, Massachusetts, and citizens of said Commonwealth, and Marvin Hughitt, a citizen, as your petitioner is informed and

believes, of the State of Illinois, and a resident of Chicago in said State.

(124). That the purpose of said Committee was to induce the holders, except the United States, of the various kinds of bonds, except the subsidy bonds, secured upon the main stem of the Union Pacific Railway Company, including the Kansas Pacific Line, "to combine," regardless of whether their respective holdings had matured or were in default or not, and especially so to induce "first mortgage bondholders" so "to combine for an enforcement of their prior lien."

(125). And to that end said Committee represented that the lien of the United States on the easterly end of the main line began at Omaha, and of the Kansas City line at Kansas City (exclusive of the Kansas City, Missouri terminals) that the United States had no lien on the Kansas City line west of the three hundred and ninety-fourth mile post, nor on the Leavenworth branch, so-called, nor on the Cheyenne division.

That eminent counsel had advised that the lien of the first mortgage bondholders might be effectively foreclosed, and that while it was desirable to make a settlement with the United States and to continue efforts in that direction, further delay on the part of the first mortgage bondholders in protecting themselves by securing their legal rights, would be likely to become dangerous and to result in loss.

That they, said Committee, "have been asked by large interests to formulate and proceed with a reorganization which shall at once secure to the holders of the first mortgage and other bonds requiring consideration in reorganization, a full return in new securities of the successor company with fixed charges based upon the lowest results from the operation of the main line and

the Kansas Pacific and Denver Pacific lines, which have been obtained during the times of the greatest depression."

(126). That said Committee had formulated a plan which it was believed "fully carries this purpose into effect."

That under said plan said Committee "proposed through such foreclosure proceedings as the Committee shall cause to be instituted or shall adopt, or through such other means as the Committee shall determine, that a new company shall succeed to (or that the present company reorganized upon the basis of indebtedness fixed in this plan shall retain) the main lines and lands covered by the mortgages included in the plan."

That under said plan the new Company shall issue the following securities:—

First Mortgage Railway and Land Grant,	
Fifty-year four per cent. Gold Bonds,	$100,000,000
Four per cent. preferred stock,	75,000,000
Common stock,	61,000,000
Total,	$236,000,000

(127). Your petitioner shows that the whole amount of bonded indebtedness, except that due to the United States, taken into account in the capitalization and bond issue proposed, amounts to only about fifty-five millions of dollars.

That if the entire indebtedness due to the United States, both principal and interest, and the entire capital stock, too, were also taken and added to the bonded indebtedness included as aforesaid, the whole amount of all thereof would fall some sixty millions short of the enormous issues of securities contemplated in said plan,

the greater part of which excess is, by said plan, allotted in bonuses to mortgage bondholders other than the United States to induce them to come into said plan, and to said Reorganization Committee and its associate syndicate, as hereinafter mentioned, as compensation for alleged anticipated services.

(128). That the whole provision which said plan purports to make for the payment of the lien indebtedness due to the United States, which, if reduced by the application thereto of the sinking fund, hereinbefore mentioned, would amount to about fifty-five millions, was thirty-five millions in said proposed first mortgage bonds and twenty millions in said preferred stock; and that by the agreement hereinafter set forth, said sum is reduced to a possible minimum of less than thirty millions in cash. Whereby, if bonds may be sold for money with which to pay the same, the whole amount of public and private bonded indebtedness taken into account by said Reorganization Committee need not exceed ninety millions of dollars, and which embrace substantially all the value to be represented by said proposed issue of two hundred and thirty-six millions of stocks and bonds on said property.

(129). That, therefore, by said plan, a foundation will be laid for the contention that rates of fare charged for the service of said railroads, which Congress now has a right to reduce, when such rates exceed ten per centum of the cost of said road, may be imposed upon your petitioner desiring to connect with and upon the public generally using said roads, so as to yield a return to all these enormously watered, alleged representations of value; and all in derogation, as your petitioner is informed and

believes, of constitutional prohibitions of the State of Nebraska, in which the main stem of said line principally lies.

(130). That, further, to induce said first mortgage bondholders to come into said scheme, said Committee purported to enter into the following arrangement with a certain banking firm doing business under the firm name and style of Kuhn, Loeb & Co.:

"Through arrangements made with the Syndicate hereafter mentioned, the following cash provisions are made in respect to default and future interest on present first mortgage bonds of the Union Pacific and Kansas Pacific Railway Companies, as shown in detail below.

"First: The coupons now in default upon present first mortgage bonds are to be purchased in cash for account of the syndicate at the time of the deposit with the Committee of the bonds to which they pertain.

"Second: Coupons maturing on deposited first mortgage bonds in the interval between the deposit thereof under the plan and the date from which bonds of the new company are to bear interest (Jan. 1st, 1897) are to be purchased by the syndicate from the Committee, which, in turn, shall apply the amounts so received at the respective due dates of the coupons to the payment of corresponding installments on its outstanding certificates applicable to such deposited bonds. * * * The proportion of the current semi-annual interest installments which shall have accrued on January 1st, 1897, on such of said bonds as do not bear January coupons, shall be likewise provided for in cash at the time of the delivery of the new bonds."

That—

"During the pendency of the plan and when it shall be declared operative, the depositor, under the Reorganization Agreement, of a $1,000 bond of either of the following classes:

Union Pacific,
Kansas Pacific, Eastern Division,
Kansas Pacific, Middle Division,
Kansas Pacific, Denver Extension,
} First Sixes,

will receive:—

"1st. Cash for all defaulted coupons on the date of deposit.

"2d. A certificate entitling the holder to compound interest upon the same when allowed by the Court.

"3d. Cash for all maturing coupons on the respective dates of their maturity to the date from which the new bonds will commence to draw interest.

"4th. Six per cent. to January 1, 1897, on bonds maturing in 1895 and 1896, payable semi-annually.

"5th. Cash for the rate difference of 2 per cent. between the old and the new bonds, on bonds maturing subsequently to January 1, 1897, from January 1, 1897, to the date of maturity of the old bond.

"6th. $1,000 in a new 50-year first mortgage gold bond bearing 4 per cent. interest from January 1, 1897.

"7th. $500 face value in preferred shares of the new corporation.

* * * * * * * * * *

"Upon any just and conservative valuation which may be placed upon the new first mortgage bonds and the new Preferred Stock offered in exchange for the principal of the present first mortgage bonds, these new securities will be found to merit such market price as to make the exchange clearly desirable from the standpoint of realization value."

(131) On the other hand, and to enable said Reorganization Committee to acquire power and control over said Union Pacific Railway Company in aid of its purposes aforesaid, the stockholders therein were induced to surrender their stock to said Committee and to pay an assessment of fifteen dollars per share on their stock to aid said Committee in its purposes by representation as follows:

"The common stock of the present company will be assessed $15 per share Shareholders paying the assessment of $15 will receive the amount of the assessment (viz., $15 per share) in new preferred stock at par, and will also receive par of their present common stock in common stock of the new company.

"Shareholders who do not pay their assessments as called will forfeit their rights. The stock assessment will be underwritten before the plan is declared operative.

"The proceeds of the assessment will be applicable to the cash requirements of this plan as herein provided, and to such requirements as shall be fixed and determined by the Committee, including such expenses and charges as it shall make or incur in the premises; and suitable compensation to the members of the Committee."

(132) Both bondholders and stockholders were required to act on the respective inducements held out to each promptly on the representation that—

"The time for the deposit of bonds receivable under this plan and of the shares of stock of the present company is limited to December 31st, 1895, after which no bonds will be admitted except upon the payment of a penalty of five per cent.

"The Committee moreover may at any time decline to receive further deposits of securities, and should, under any settlement with the United States Government, a foreclosure under the first mortgage alone become requisite, first mortgage bondholders who have not deposited may suffer material detriment and forfeit important advantages. * * *

"Upon shares of stock deposited after the time above limited (December 31, 1895), the assessment will be at the rate of $20 per share. After the expiration of the limit of time, the penalty of $5 per share will be payable at the time of the deposit and will not be refunded."

And that—

"Holders of securities not deposited in the manner herein provided within the time so fixed, limited, extended or renewed, will not be entitled

to deposit the same or become parties to this agreement or share in the benefits thereof, and shall acquire no rights thereunder except by express consent of the Committee, and on such terms and conditions as the Committee may prescribe."

(133) And in respect of said reorganization syndicate, said Committee represented to said security holders:

"A Reorganization Syndicate has been organized under the management of Messrs. Kuhn, Loeb & Company, bankers, to furnish the sum of ten million dollars for the following purpose:

"1. To purchase all the interest coupons on first mortgage bonds now in default.

"2. To purchase, as they shall mature hereafter, the interest coupons on first mortgage and also the semi-annual assignments of interest accruing on bonds already matured during the pendency of the plan and until it shall become operative.

"3. To purchase, if it shall be found advisable for the promotion of the reorganization, any outstanding first mortgage bonds and Omaha Bridge bonds, and to deposit the same under this plan, and if it shall be found advisable to purchase all or any defaulted or future maturing coupons or interest assignments on Omaha Bridge bonds.

* * * * * * * *

"Such steps shall be taken in respect of all purchased coupons and interest assignments as will secure a valid claim for cumulative interest in favor of the Reorganization Syndicate.

"The right is reserved in behalf of the Committee, with the assent of the bankers, to call for an increase of the amount required to be advanced by the Syndicate to fifteen million dollars.

"The Syndicate is to advance a sum not exceeding $100,000 for expenses, repayable with interest at six per cent. interest after the plan shall have been declared operative. All advances made by the Syndicate shall be repayable in gold.

"Six million dollars of preferred stock are to be turned over as compensation to the syndicate, of which the bankers are to retain one million as their own compensation."

(134). Your petitioner says that the plan of said Reorganization Committee, as aforesaid, was printed and was widely advertised, to the end that it might come to the notice of security holders; and that, annexed to the plan, was a draft of an agreement which all depositors of securities were to sign, which provided that said Reorganization Committee should have such transfer assignments and powers of attorney as should enable said Committee to vest the title in all such securities in themselves.

Your petitioner craves leave to refer to said plan and agreement at the hearing.

(135). And your petitioner, upon information and belief, says that nearly all of the bonds of the kinds embraced in said plan of reorganization, and nearly all of the stock of said Union Pacific Railway Company, have been deposited subject to the control of said Committee, as required by said plan.

And your petitioner, on allegation of information and belief, submits that the purpose of said plan and agreement is manifestly, upon the face thereof, to wreck and destroy said Union Pacific Railway Company, together with all the stock interests therein and many of the junior securities thereof, also all ability on the part of said company to fulfill the purposes for which it was created and aided by the United States, or to perform its duties to the United States and the public and localities and to your petitioner and other interests, as hereinbefore set forth, and all value in and sources of payment for any balance of its indebtedness to the United States, and all unsecured indebtedness, and so that another company which said Reorganization Committee may form or cause to be formed shall succeed to all its properties, including its said railroad and telegraph lines freed from the obligations and servitudes which pertain to said existing company and the properties thereof, as hereinbefore set forth.

(136). And in like manner submits that said plan and agreement are usurious and champertous and disclose a purpose of maintenance, especially in behalf of said first mortgage bondholders.

All to be accomplished by confederacy between said Committee and the members thereof and said Syndicate, wherein is also expressly disclosed a purpose to achieve important advantages for the security-holders who come in under their

plan, whereby and in comparison with which other holders of like securities will suffer material detriment.

(137). And your petitioner, on allegation in like manner of information and belief, submits that said plan and agreement, taken in connection with the action of said Reorganization Committee under and in pursuance thereof, also constitute a confederacy or conspiracy offensive to the United States and the people thereof, and in derogation of and detrimental to their power and interests.

(138). Thus your petitioner, on information and belief, alleges that said Reorganization Committee assembled said bonds and stocks under advice, belief or pretence and representation that it would thereby acquire rights and powers against the United States, which, in the absence of any compromise with the United States, it would exercise all as follows:

That the lien of the first mortgage bonds covered other property, railroad, terminal, bridge and equipment not included in the subsidy lien of the Government. That the first mortgage bondholders might foreclose the Government out of its interests in the property, just as they might foreclose individuals. That the Government is in the position of any other creditor. That notice could be given to the United States, and, if they failed to resort to their right of redemption, the legal effect would be an estoppel. That the Reorganization Committee would have all the power they needed to foreclose, and that no legislation on that point was necessary. That such proceedings should result in foreclosure sale at which the Reorganization Committee would probably be the purchasers, or a committee designated by it as purchasing trustee.

That in such sale the franchise of the company would be sold, and the right of the United States to keep and maintain

directors in that corporation would be extinquished, as well as any obligation of that character. And that the right of the United States to the transportation of its soldiers, munitions of war, and mails would become a common law obligation of the road after it had gone into private hands, like the right of the United States with reference to any road; and that a syndicate of aliens could, under the general rule, become the purchaser of the property including its franchises.

(139). In this connection, and in connection with the fact that the Reorganization Committee contemplated becoming the purchasers for the benefit of the depositors of the securities, your petitioner calls attention to the fact that three of the five depositories of securities are established in, and three of the five places in which publication is to be made of notices required under the plan are, London, Amsterdam, and Frankfort-on-Main.

(140). Your petitioner further, on information and belief, says that said Reorganization Committee itself was of opinion that there was absolutely no occasion for foreclosure, except as against the United States, and if that matter could be settled; yet, being advised that the right way to bring a suit for the securities they represented was in the name of the trustee of the mortgage, such suits were brought before said Reorganization Committee sought any legislation from Congress, and are now pending, for the effective sale of the property free from all equities or redemption in the United States named therein, and a monition was served upon the Government notifying it of the pendency of the proceedings.

(141). Afterwards, as your petitioner is informed and believes, said Reorganization Committee addressed a statement to the Chairman of the Committee of the Senate of the United States on Pacific Railroads, expressing that the

Committee's view was that the Government could be foreclosed and that no outstanding right of redemption would be left open, but that the Committee would consider it better to agree with the Government on some just and equitable solution of the matter. And thereupon said Reorganization Committee appeared, by its representatives, before the Committees on Pacific Railroads for the Senate and the House of Representatives of the United States.

(142). And said Committees of the Senate and House formulated and reported to both said branches of Congress a proposed act, called the Funding Bill, for the release by the United States of its interests in said railroad, in accordance with proposition and terms proposed to said Congressional Committees by said Reorganization Committee, which bills were strenuously opposed by your petitioner because they made no substantial provision for the protection and preservation of the public and private rights and privileges in the premises, in which your petitioner is interested as aforesaid (except for a preferential use of said railroad for reasonable compensation by the Government), and because the Reorganization Committee's representatives opposed an amendment to said bill, which should protect your petitioner's said rights and interests.

(143). And said bill and the propositions thereof were, by a very large majority of the vote, utterly defeated and rejected in the House of Representatives on the eleventh day of January last past, and a motion to recommit was held under advisement by the Speaker of the House until the twelfth; and a few days thereafterwards a bill for the adjustment of the Government's interests in said railroads was introduced into the Senate by the Senate Committee on Pacific Railroads, and a like bill was shortly afterwards reported to the House by the Committee thereof; which bill,

as reported to the Senate, is there pending and is the first on its calendar, the passage whereof for the purpose, among others, of avoiding any threatened foreclosure proceedings in the premises, was urged by said Senate Committee in a report made to the Senate on the eighth of the present month, to which report your petitioner asks leave to refer.

(144). In the meantime and after the alleged or attempted services of notice or monition upon the United States in said prior foreclosure suits brought in behalf of the first mortgage bondholders, the Attorney-General steadfastly kept the Government out of said suit, though his special assistant in the matter had a good deal of conference with counsel for the Reorganization Committee, and the Attorney-General was advised of their contentions and that an attempt would be made to enforce the Government's appearance in the foreclosure suits with a view of giving a complete title to the purchaser in the foreclosure sale.

(145). That also, in the meantime, the Reorganization Committee, through counsel, urged upon the Attorney-General that the Government could be made party to a suit in which said Committee would oust the rights and interests of the United States if it failed to acquire them under the Funding Bill, until the Attorney-General, who, while believing that the appearance of the Government could not be compelled, was nevertheless pursuaded that in the threatened foreclosures a difficult problem was presented by the Government's ownership of a subordinate security upon property whose value he thought was generally believed to be insufficient to pay in full any but said first mortgage; and thought that, unless the Funding Bill was passed, the Government should endeavor to secure terms for its appearance in court in the way of an assurance of such a bid on the property, in

case of a judicial sale, as would secure it a fair realization of the value of its lien.

(146). That immediately upon the defeat of said Funding Bill, and in the midst of the activity of Congress aforesaid in the matter, the Attorney-General, in pursuance of his opinions outlined as aforesaid, was induced ostensibly to invite overtures from said Reorganization Committee to subject the interests of the United States in the premises to a judicial auction sale, and purported to enter into an agreement with said Reorganization Committee whereby, in consideration of a promised bid of less than forty-six million dollars to be made by or in behalf of said Committee, he agreed that the Government "shall at once take proceedings in the pending foreclosure suit," meaning the suit wherein foreclosure is sought of the lien of the first mortgage bonds, which, it is alleged, underlies the lien of the United States in the premises, "or by independent bills for the foreclosure of its" (the Government's) "lien upon the railroad and property of the Union Pacific Railway (which includes the Kansas Pacific line) by sale thereof, and for the sale of the sinking fund in the hands of the Secretary of the Treasury relating to the Union Pacific Railway Company. * * * * The sale of the sinking fund to be judicial or otherwise."

Said alleged agreement purports to be in the form of a correspondence, copy whereof, with a statement in respect of the same, the Attorney General furnished to the Senate in a communication addressed to the President of the Senate in response to a resolution of inquiry, a copy of which communication is hereto annexed and made a part hereof.

(147). And that in pursuance of the agreement and arrangement aforesaid, and to carry out the same, the Attorney-General filed his said original bill in behalf of the United States in the first of the above entitled causes, and

purported to enter or to cause to be entered an appearance and answer in behalf of the United States in the prior foreclosure suits aforesaid, being the second of the above entitled causes, with the intention that contemporaneous foreclosure sales should be made in both said proceedings. And your petitioner begs leave to refer to both of said bills, the pleadings therein, and records thereof, here on file for the purpose among others of showing that both contemplate a sale of said Union Pacific Railway and all statutory rights and claims of the United States, and the franchises embraced in the premises free and discharged of all claims of the United States or of said defendant Union Pacific Railway Company, and without regard to or any protection of the rights of the public or any member thereof in the premises.

(148) All and singular the foregoing acts of the Attorney-General were, as your petitioner is informed and believes, done at the request and in pursuance of the purposes of the combinations of interests effected by and in furtherance of the understanding, purpose, and interest of said Reorganization Committee and the members thereof and said Kuhn, Loeb & Company, and their associates, as hereinbefore mentioned and otherwise.

(149) And your petitioner submits, on information and belief, that the taking of its railroad from said Union Pacific Railway Company and the vesting thereof in a new corporation in the manner and with the effect contemplated by said Reorganization Committee would and are designed to impair or destroy the rights, powers, and interests of the United States and the public now secured as aforesaid, as not applicable to said new corporation, as follows:

To preserve the right of your petitioner and others in like situation to build railroads to connect with said Union Pacific Railroad at such places and on such just and equit-

able terms as the President of the United States may prescribe.

To require said Union Pacific Railway Co. to have and retain the roads and equipment essential to the performance of its duties, both to the United States and every part thereof and to the people, and to operate said road as now required by law and subject to existing rights of Congress to reduce the rates of fare thereon.

To have said road subjected to all the servitudes imposed upon it for the benefit of the Government or the public, especially including herein subjection to an effective exercise of the statutory rights and powers now secured to the United States and to the people, as hereinbefore set forth.

To add to, alter, amend, and repeal the Act of July 1st, 1862, aforesaid, "the better to accomplish the objects" of the said Act, "namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (but especially in time of war) the use and benefit of the same for postal, military and other purposes."

To enact special legislation in behalf of the United States' own interests in respect of said road, as the United States may now do, both of sovereign right and under said Act of 1862.

To prevent, especially in time of war, any alien or hostile interests from acquiring, operating, or destroying said road as the private property of such interests.

To require that said road and the branches thereof, and the Central Pacific Railroad in connection therewith, be kept in repair and in working order, and to take the income of all said roads to repair any part of either.

To have supervision over and knowledge of and a voice and vote to determine the purpose of the directorate of said Company by representation of the Government on said Board.

To require reports concerning said road to be made to the Commissioner of Railroads of the United States or to any other officer or bureau of the Government.

To have the books, records, correspondence, and all other documents of said Company open at all times to the inspection of the Secretary of the Treasury or such persons as he may designate.

To secure that "the whole line of said railroad and branches" (including the Central, Union and Kansas Pacific Roads), "shall be operated and used for all purposes of communication, travel and transportation, so far as the public and the Government are concerned, as one connected, continuous line."

And other reciprocal obligations imposed upon said bond-aided railroads by Section Fifteen of the Act of July 2, 1864. Any refusal to comply with which requirement now constitutes, as provided in the Act of June 20th, 1874, a penal offense against the United States, punishable by imprisonment and also by punitive damages to any of the public aggrieved by such refusal.

To prevent the payment of any dividends to the stockholders of said Company except out of net earnings, which to do was forbidden generally by the Act of March 3d, 1873, and which payments, if made, when the requirements of the Thurman Act are not complied with, are in the sixth section of said Act made a penal offense against the United States, punishable by imprisonment.

To prevent the creating of any mortgage or pledge upon the property or earnings of said Company, without leave of Congress, except for the purpose of funding and securing

debt existing on March 3d, 1873, or renewals, which to do is now, as provided in the Act of Congress of said date, a penal offense against the United States.

To have the rates of fare on said railroad reduced by Congress, if unreasonable, when they exceed ten per centum of the cost of said road.

To secure a right of other railroads to connect with said Union Pacific Railroad on such just and equitable terms and at such places as the President may prescribe.

And other like rights and immunities for the benefit of the United States, the various sections thereof, and the public and private interests affected or involved.

(150). And your petitioner says that counsel of said Reorganization Committee is also of counsel in the foreclosure proceedings of the second of the above entitled suits, and of Russell Sage and George J. Gould in their proceedings to foreclose the consolidated mortgage aforesaid, and that the co-operation of interests to effect a foreclosure against the United States was so apparent in the examination of one of the Receivers before the United States Senate Committee, that a senator conducting said examination (Senator Brice) declared:

"It is apparent from what examination has been had, that on the threshold of this whole matter there is a cloud on the action of the Receivers, and of the Trustees, and Counsel, and on the whole fabric. It is true (and I think you should explain to the Committee) that there is practically but one mind in charge of all the various phases of the case, and that the divisions and partitions between them are merely technical—I mean between the Mortgage Trustees and the Counsel."

(151). And your petitioner, upon information and belief as to the construction to be put upon the acts and doings of the Reorganization Committee and the organization thereof and of its associates and beneficiaries, submits that they constitute and effect a combination, both unlawful in itself since, among other reasons, it is champertous and

embraces maintenance as above submitted, and unlawful in its purposes since they offend against the United States as aforesaid.

(152). Your petitioner, on information and belief, says that said Reorganization Committee make various pretenses in the premises, as follows:

That it has a lawful and enforcible contract with and against the United States by virtue of its correspondence with the Attorney-General aforesaid, and the deposit made by it, or, if not, then that it should not itself be bound and may withdraw said deposit for want of consideration.

That under the provisions of the Act of March 3rd, 1887, aforesaid, and under the direction of the President, the Attorney-General had authority to enter into said agreement and can carry it out.

That said agreement is necessary and in time pressing for the relief and payment of first mortgage bondholders.

That otherwise and by virtue of his office, the Attorney-General could enter into said agreement and carry out the same in the lawful exercise of his official duties.

That his authority includes the power to sell the sinking fund in the hands of the Treasurer of the United States.

That said agreement does not usurp functions more appropriately pertaining to the Secretary of the Treasury or to Congress.

That said agreement is in its provisions wise, fair, and equitable for and not unconscionable toward the United States.

That your petitioner and others of like interests and the public have no standing herein to oppose.

That the Court can do full justice and equity to all interests concerned.

(153). But your petitioner, on information and belief, charges to the contrary of all and singular the foregoing

pretenses as hereinbefore set forth, and further, on information and belief, says that the truth and fact thereof are as follows:

That said alleged agreement between the Attorney-General and said Reorganization Committee is not a lawful and enforcible contract against any or either party, and neither that nor said alleged deposit of $4,500,000 therein mentioned afford any security to the United States that said agreement would be observed or performed before this or any other Court having jurisdiction, or otherwise or elsewhere, none of said Committee being a party to any of said suits, nor are they or any of them or said deposit within or subject to the jurisdiction of this Court.

(154). The Act of March 3rd, 1887, by the true construction thereof, as hereinbefore shown, contemplates the acquisition by the United States and subrogation to and foreclosure of any forcloseable mortgages which the United States had expressly authorized to be placed upon parts of said property; also foreclosure of the lien declared to the United States in the Thurman Act so far as any such lien was necessary to cover property not derived from and which, therefore, on forfeiture, would not revert to the United States.

Beyond this, it is submitted the Act would become obsolete as a remedy in behalf of the United States and superseded by the operation of the forfeiture acts in six months after any default.

Further than this, it is apparent that the Act affords no justification to the Attorney-General for his action or the direction of the President thereto, since the Act is, by its terms, to be invoked only when, in the opinion of the President, it shall be necessary to avail of it for the protection of the security and interests of the United States as against prior liens lawfully liable to be enforced, in which event it is the duty of the President to direct the payment of such prior liens.

(155). It is not pretended or averred that the President entertained any such opinion of necessity, or that any such necessity did, in fact, exist, but to the contrary thereof the Attorney-General's bills show that it did not exist for they declare that the Attorney-General had not entered the appearance of the United States in the prior foreclosure suits, and his published report shows that his refusal so to do was, in his opinion, a perfect protection to the United States as against such suit.

(156) It is further submitted there are no foreclosure statutes or common law of the United States to regulate the matter, and in the absence of such the only foreclosure contemplated in said Act when operative is strict foreclosure and not foreclosure sale.

That this is especially true when, as in this case, the defendant is not in possession and if in default its titles and franchises have reverted to and vested in the United States for breach of condition and forfeiture. The Government cannot foreclose against itself and there is nobody else to respond.

Your petitioner has hereinbefore shown that said agreement was not necessary for the relief of the first mortgage bondholders while the sinking fund on which they constitute a first charge is larger than the amount of such bonds that have matured, and that it is good equity that they exhaust that special security before ousting or competing with other or junior creditors for participation in a common security or general asset of an insolvent.

That the Attorney-General had no authority to make the agreement by virtue of his office or in the exerise of any duties imposed upon him as a law officer of the Government. On its face it is apparent that the transaction was not of such intendment as may be relegated to the Department of Justice, but was in substance and truth a bargain

or compromise to the support of which the exercise of the Attorney-General's official functions in conducting litigation is subordinate and perfunctory.

That especially he could not agree to any sale or disposition of the sinking fund which by emphatic decision of the Supreme Court belongs to the Union Pacific Railway Company (99 U. S., 700), and the United States holds it subject to a prior lien and trust in behalf of first mortgage bondholders.

(157). The agreement, it is submitted, is a usurpation by the Executive Department of the functions of Congress, which tribunal was dealing with the matter when the foreclosure bills were filed, which bills, it is submitted, must either take the matter out of the hands of Congress or be stayed or dismissed.

Your petitioner submits that if Congress has the right to legislate in the premises, neither the Executive nor Judicial Departments of the Government can terminate the right without the consent of Congress. To show the pending action of Congress in conflict with the pending proceedings herein, as well as to support many of your petitioner's claims herein, and to show the unwisdom of any foreclosure sale in any of the above entitled actions, your petitioner begs leave to again refer to a report recently (April 8th, 1897) made to the Senate of the United States by the Committee thereof on Pacific Railroads.

While the refunding bill aforesaid was properly before Congress and was under debate, your petitioner procured a proposed amendment thereto to be presented and read, designed to protect certain of the rights and interests of your petitioner in the premises, as hereinbefore set forth, which amendment said Reorganization Committee, by representatives of the interests thereof, opposed, and said Committee of the House, having said proposed act in charge, rejected said amendment, which rejection, as your petitioner is in-

formed and believes, largely contributed to the defeat of said bill; and your petitioner says that said bill was, in the main, supported by the representatives of States whose people were financially interested, and was, for the most part, opposed and defeated by the votes of representatives of States whose people were largely dependent upon the operations and connections of said road and the service to the public to be thereby secured; and that, immediately following said defeat, other bills were in preparation and to be introduced more in accordance with the seeming views and purposes of the majority than the defeated bill had been, when the foreclosure proceedings herein were instituted by the Attorney-General. And your petitioner shows that these and other like differences between the private interests involved seeking a compromise, and the public interests to be affected by the disposition of the railroads aforesaid, can be more appropriately contested and determined in Congress, where all the people are represented, than by the courts.

(158). The agreement and arrangement is unwise for and unconscionable toward the United States.

Your petitioner shows that the amount of cash required for completing the purchase at such sale is so enormous that preparation to meet the same by more than one or two parties practically forbids competition, and that such improvident forced sale would presumably discharge all persons collaterally or remotely liable for the payment of said indebtedness to the United States, or liable to contribute to any fund which should be available therefor, especially including stockholders in said Union Pacific Railway Company, its constituents and predecessors to pay up unpaid subscriptions to the stock of said companies.

Such sale would subject to the risk of a cash bid of forty-six millions all the security the Government has for a claim of about seventy millions, thus imposing a probable loss of about twenty-five millions on this property alone, and a

possibility of large liability to first mortgage bondholders for selling the sinking fund on which such first mortgage bondholders assert a first lien, and especially that such sale would seemingly be inevitably ruinous of the value of a similar lien of the United States for about sixty millions now maturing upon the Central Pacific Railroad, for which road, in the event of the sale herein contemplated, there would be no connection or outlet to the East in or over which the United States would have any interest or control.

In the report of the Senate Committee on April 8th, 1897, it is said:

"It is confidently believed by the committee that a result can be reached through and by means of a commission which will be much more advantageous to the interests of the United States than could be reasonably anticipated by, or as the result of, a suit for the foreclosure of the Government's lien, which, as has been stated, would undoubtedly necessitate the foreclosure of the paramount lien securing the first-mortgage bonds."

In the report of the majority of the House Committee of February 11, 1897, it is said as follows:

"Again, it is thought by many, and strong grounds to sustain it that a better price can be obtained for the Union Pacific and Central Pacific railroads, if sold jointly, than can be if sold separately. It would be prudent at least to make a test of this, which can only be done by having some proper tribunal to represent the Government."

And in the report of the minority of that Committee:

"Besides, there are more lawsuits than property to be sold, and until these can be determined, nobody would dare to bid save this reorganization committee that controls the junior and contesting interests."

"But the great loss will fall on the sale of a similar lien which the Government has for about sixty millions on the Central Pacific. The Union Pacific is the only eastern connection of the Central Pacific, in or over which the Government has any interest or control, and when that is gone, the Government's second mortgage on a road running from San Jose to 5 miles west of Ogden would be of but little, if any, value. Everybody now understands this, and the most eminent experts in the country say it would not be merely a blunder but a crime to sell the two roads separately."

And we beg leave to refer to perhaps as good expert testimony as can be found in the country, in our quotation from the statements of Stuyvesant Fish before the House Committee as hereinbefore stated.

The agreement fixes the price first, and the Attorney General's bill provides for finding out what is to be sold afterwards. There are the widest possible differences of

opinion among lawyers and others of special and expert knowledge in the premises as to the nature and extent of the Government's liens aforesaid, and what, if any, are the underlying liens, or what they cover; and equally wide differences as to what the assets of the Union Pacific Railway Company are, and what of them are subject to the Government liens or available to the payment of the indebtedness so secured. These differences, none of which have been judicially ascertained, measured in money, amount to very many millions of dollars, among which is the question as to whether the Government's lien covers the Omaha and Council Bluffs terminals and the bridge between the same, which has been a subject of constant debate in Congress, the doubt and gravity of which have been stated to Congress by the receivers of said property, and which question is generally thought to involve an interest of the value of ten million of dollars; also, a question as to whether the income of the Union Pacific Railway Company invested in new and branch lines while that Company has been, by anticipation and as shown in the Thurman Act insolvent, can be followed, which question is estimated to involve between twenty and thirty millions; also the question as to whether the lien declared in the ninth section of the Thurman Act is constitutional, which is pertinent to determine whether the Government's lien covers land and securities in one trust to the nominal value of more than ten millions, and in another trust of nearly one hundred millions, and other large properties, and if so, what the order or priority of such liens may be.

That there is a further question as to whether the roads can be sold free from the servitudes imposed upon the same by existing laws in behalf of the Government and public, including the conflicting contentions as to the right of the Government to retain in priority of the interests of any first mortgages all compensation for services to the Government, until the indebtedness for the aid to said roads furnished by the Government shall be fully paid, which compensation

now amounts to about fifteen hundred thousand dollars per year, and could be indefinitely perpetuated to that extent and retained by the Government, if the road should be sold so as to leave a deficit in the indebtedness to the amount contemplated in the guaranteed bid aforesaid. That other complications and great, like and unlike, uncertainties as to what constitutes the securities to the Government and its interest therein exist and concerning which a former Attorney-General, Mr. Olney, filed a paper in the first of the above-entitled suits, to which your petitioner craves leave to refer; all of which matters, it is submitted, should be ascertained and determined before there should be any offers of sale whatsoever.

(159) As to the two remaining pretences, your petitioner submits that if it is not entitled to standing herein, as is said in one of said pretences, then the Court does not have all parties in interest before it so as to do full justice as is said in the other.

Wherefore and forasmuch as your petitioner is without other relief in the premises:—

To the end that your petitioner's right to build a railroad to and to connect with the railroad of said Union Pacific Railway at such point and on such just and equitable terms as may be by law prescribed;

And that said terms may include in behalf of Sioux City and the Middle Northwest a reciprocal exchange of business and co-operation with the road and branches of said Union Pacific Railway, without adverse discrimination against the road of your petitioner or in behalf of said road of the Union Pacific Railway Company or any other branches or connections thereof; and that the rates of fare on said Union Pacific Railway Company may continue to be within the control of Congress and subject to reduction when unreasonable; and that such railroad, together with its branches and connections,

may be operated as a connected continuous line; and that in the first of the above-entitled cases the remedies of the United States, against the properties of said Union Pacific Railway Company for default, may be confined to forfeiture and reverter of all rights, privileges, franchises, and grants derived from the United States, and strict foreclosure of all liens of the United States upon all and any other properties of said Company;

And that there may be no enforcement of the indebtedness due from said Company to the United States in any foreclosure proceedings which shall impair the rights of your petitioner as aforesaid, and other public and quasi-public obligations of said Union Pacific Railway Company; and that in the second of the above-entitled causes there may be no foreclosure or foreclosure sale which shall impair the rights of your petitioner as aforesaid, but that the holders of said first mortgage bonds which have matured shall be required first to exhaust their remedies against the sinking fund held by the United States before resorting to foreclosure, while said Company is not in default except by the neglect of the United States to apply said fund as aforesaid to the payment of said bonds as they mature; and that in both the above-entitled suits the receivers may be directed to enforce the liabilities of certain of the stockholders for unpaid subscriptions, to the end that the creditors of said Company may be paid with the proceeds thereof;

And that in the third and all the above-entitled suits said defendant Union Pacific Railway Company may be required to defend and maintain its rights and immunities in the premises so that it may perform its duties and observe its obligations to the United States and the public, especially to your petitioner, as hereinbefore set forth; and that upon its failure or neglect to do so your petitioner may be admitted so to defend in the name and behalf of said Company;

And that the members of said Reorganization Committee of the Union Pacific Railway, hereinafter named, may be made parties defendant to this petition in each of the above-entitled causes, and that the first of said causes may be held to have been unauthorized, and dismissed, and the second premature and misconceived as to the remedy prayed for, and that the complainants in the first of said causes and the members of said Reorganization Committee and said defendant Union Pacific Railway may be required to answer this petition, but not under oath, and that they and each of them and their officers and agents may be enjoined and restrained from further prosecuting or participating in or promoting any foreclosure sale of the railroad or other property of said Union Pacific Railway Company or reorganization of said Company, and that no such sale may be had; and

In the alternative, but protesting against any such sale, that suitable provision may be made, in the decrees and orders therefor in all said cases, to preserve the right of your petitioner to build its railroad to and to connect the same with the road of said Union Pacific Railway Company at such place and on such just and equitable terms as may be therein prescribed, which shall include a right to connect therewith as a part thereof and to a fair reciprocal exchange of freight and traffic and co-operation with the road and branches of said Union Pacific Railway Company so as to form a part with it and its connection, the Central Pacific Railroad, of a continuous connected line from Sioux City aforesaid to the Pacific Ocean, all without adverse discrimination of any kind against the road of your petitioner or in behalf of said road of the Union Pacific Railway Company, or any other branch or connection thereof;

And that, should any judicial sale be found to be authorized and necessary in the premises, a master may be appointed to formulate and report to the Court a plan

for the same, which shall be protective of all interests concerned, especially those of your petitioner as hereinbefore set forth, and on terms which shall bring the purchase of the property to be sold reasonably within the means and resources of competitive and more than one or a few bidders;

And that your petitioner may be admitted a party hereto for the protection of its own rights and interests, as well as those of others in like situation with itself, who may choose to come in and be made parties hereto, and those of the public, as all or any of said rights or interests arise out of or rest upon any duties or servitudes undertaken or imposed upon said Union Pacific Railway Company, its constituents and predecessors, and its and their railroads and the operations thereof not due strictly to the Government as such and to make suggestion of all such duties and servitudes, due to the Government and the public, in which your petitioner and those in like situation with itself and the public have any interest;

And that your petitioner may have such other and further relief as the nature of the case may require and to your Honors may seem meet;

May it please your Honors to admit your petitioner as a party in each of the above-entitled causes, with full standing, to protect and defend all and singular the rights and interests herein asserted by your petitioner, and the rights or duties of others not otherwise protected or defended in said causes, on which the interests of your petitioner depend, with right to notice and to be heard on all matters touching the same, and to appeal and review, and to all other remedies and reliefs necessary, proper, or convenient in the premises, and that an order may be issued to be addressed to said Reorganization Committee and the members thereof, to-wit: Said Louis Fitzgerald, Jacob H. Schiff, and Chauncey M. Depew, all of the city, county and State of New York, and

T. Jefferson Coolidge, Jr. and Oliver Ames, 2nd, both of Boston, in the Commonwealth of Massachusetts, and Marvin Hughitt, of Chicago, in the State of Illinois, restraining them from further pursuing or seeking to pursue or enforce said alleged agreement between said Committee and the Attorney-General of the United States, to-wit, the agreement expressed in the communication hereto annexed; and a subpoena requiring said Committee and the members thereof aforesaid and said defendant the Union Pacific Railway Company to appear and answer all and singular the premises, in each of said suits, but not under oath, the benefit of answer under oath being hereby waived, and an order that all other parties to any of the above-entitled causes wherein this intervention is sought who may have or assert any interest in the matters of this petition to-wit:

Russell Sage and George J. Gould, both of No. 71 Broadway in the City of New York, as Trustees under a certain alleged mortgage known as the Consolidated Mortgage of the Kansas Pacific Railway Company, and also as Trustees under an alleged first mortgage upon the Cheyenne Branch, so-called, of the Union Pacific Railway Company, who appear by their Solicitor (among others), Winslow S. Pierce, of No. 195 Broadway in said City of New York.

John F. Dillon, of No. 195 Broadway, and Henry M. Alexander, of No. 120 Broadway, both in said City of New York, as Trustees under an alleged first mortgage of the Eastern Division of the Kansas Pacific Railway Company, and who appear by their Solicitor, Charles C. Deming, of No. 120 Broadway of said City of New York.

John A. Stewart, of No. 45 Wall Street, and the said John F. Dillon, of No. 195 Broadway, both in the City of New York, Trustees under an alleged first mortgage on the Middle Division, so-called, of the Kansas Pacific Railway Company, who appear by their Solicitor, Ed-

ward W. Sheldon, of No. 45 Wall Street, in said City of New York.

The said John A. Stewart, whose address is as aforesaid, and William Endicott, Jr., the latter, as your petitioner is informed, of Boston in the Commonwealth of Massachusetts, as Trustees under an alleged first mortgage of the Denver Extension, so-called, of the Kansas Pacific Railway Company, who appear by their Solicitor, the said Edward W. Sheldon, whose address is as aforesaid.

The Mercantile Trust Company, of No. 120 Broadway in said City of New York, Trustee under an alleged mortgage called the Kansas Division and Collateral Mortgage of the Union Pacific Railway Company, asserting, among other things, a first lien on the equipment of said Company, which appears by its Solicitors, Alexander & Green, and W. W. Green, all of No. 120 Broadway of said City of New York.

The Union Trust Company as Trustee under an alleged first mortgage upon the lands of said Union Pacific Railroad Company, which appears by its Solicitor, Wheeler H. Peckham, all of No. 80 Broadway, in said City of New York.

J. Pierpont Morgan, of said New York City, at the corner of Wall and Broad Streets therein, and Edward F. Atkins, of said Boston, as your petitioner is informed and believes, as Trustees under an alleged first mortgage on the Omaha Bridge, who appear by their Solicitors, Seward, Guthrie, Morawetz & Steele, of No. 31 Nassua Street, in the City of New York, and also by Wharton & Baird, of Omaha, in the State of Nebraska, in the New York Life Building therein.

The Central Trust Company, as Trustee under an alleged renewal mortgage, so-called, on said Omaha Bridge, which appears by its Solicitors, Butler, Stillman & Hubbard, and Adrian H. Joline, all of No. 54 Wall Street in said City of New York.

The Receivers of said Union Pacific Railway Company, a citizen and resident of the State of Missouri; S. H. H. Clark, of St. Louis, in the State of Missouri; Oliver W. Mink, of the Ames Building, in Boston, in the Commonwealth of Massachusetts; E. Ellery Anderson, of No. 27 Williams Street, and Frederic R. Coudert, of No. 100 Broadway, both in the said City of New York; and John W. Doane, of No. 45 Wabash Avenue in the City of Chicago, in the State of Illinois; and the collective address of all of whom as Receivers as aforesaid is No. 27 Williams Street in the said City of New York, and Ames Building, in the said Boston, who appear by their Solicitor, W. R. Kelly, of the Union Pacific Building, in the City of Omaha, in the State of Nebraska.

And said defendant, the Union Pacific Railway Company, has a principal place of business in said Boston, and in the said Omaha, in the State of Nebraska, and which appears by its Solicitor, said W. R. Kelly, whose address is as aforesaid.

And said Oliver Ames, Second, of the Ames Building, in the said Boston, and Samuel Carr, Executors, etc., the latter also of said building and city, in the care of J. H. Benton, Jr., Complainants in the third of the above-entitled suits, who appear by (among others) Harwood & Ames, of the City of Lincoln, in the State of Nebraska.

And the Complainants in the second of the above-entitled suits, said F. Gordon Dexter and said Oliver Ames, Second, both of said Boston, the address of the latter of whom is as aforesaid, who appear by their Solicitor, said Winslow S. Pierce, whose address is as aforesaid.

And in the first of the above-entitled suits, the United States appear by their Attorney-General, Joseph McKenna, of the City of Washington, District of Columbia, by their former Attorney-General, Judson Harmon, of the City of Cincinnati, in the State of Ohio, George

Hoadly, Special Assistant to the Attorney-General, of No. 22 Williams Street in the said City of New York, and John C. Cowin, Special Counsel for the United States, of the Ware Block, on the corner of 15th and Farnam Streets in said Omaha.

Louis Fitzgerald, of No. 120 Broadway; Jacob Schiff, of 27 Pine Street, and Chauncey M. Depew, of the Grand Central Station, all in the said City of New York; Marvin Hughitt, of No. 22 Fifth Avenue, in the City of Chicago, in the State of Illinois; T. Jefferson Coolidge, Jr., and Oliver Ames, Second, both of the Ames Building, in the said Boston; and all of whom are all of the members of the Reorganization Committee, hereinbefore mentioned, and whose collective address in such capacity is No. 120 Broadway, in the care of Alvin W. Krech, Secretary.

Kuhn, Loeb & Company, of No. 27 Pine Street, in the said City of New York, who have formed the Reorganization Syndicate hereinbefore mentioned.

Collis P. Huntington, of the said City of New York, the Vice-President of the Central Pacific Railroad Company.

be required by order of notice to be served upon said parties or their solicitors in such manner as the Court may direct to answer the premises, but not under oath, within a day therein to be limited; and to stand to and abide by such other and further orders, judgments, and decrees in the premises as to your Honors shall seem meet.

CREDITS COMMUTATION CO.,
Of Sioux City, Iowa,
By Its Solicitors,
JOHN C. COOMBS,
HENRY J. TAYLOR.

Of Counsel,
John C. Coombs,
25 Equitable Building,
Boston, Mass.
Henry J. Taylor,
Sioux City, Iowa.

STATE OF IOWA, }
} ss.
COUNTY OF WOODBURY, }

April 27, 1897.

I, Henry J. Taylor, having been duly sworn, state I am solicitor and of counsel for the foregoing petitioner Credits Commutation Company in the matter of said petition, that I have read the petition and know the contents thereof, and that the allegations and statements therein contained are true to the best of my knowledge, information and belief.

HENRY J. TAYLOR,

Subscribed and sworn to before me by the said Henry J. Taylor at Sioux City, Iowa, on this 27th day of April A. D. 1897.

(Seal)

E. A. BURGESS,

Notary Public in and for Woodbury County, Iowa.

April 28, A. D. 1897.

On the foregoing petition it is hereby ordered that said several parties named as respondents to said petition show cause before me in the Court Room of the Circuit Court of the United States in the city of St. Paul, Minnesota, on Thursday, the twentieth day of May, A. D. 1897, at ten o'clock in the forenoon, if any they have, why said petitioner, the Credits Commutation Company of Sioux City, Iowa, should not be permitted to intervene in said several causes as therein entitled, and to proceed in proper time to a hearing upon the matters presented by said petition, and that said petitioner give notice of said hearing to said parties respondent by mailing to each of them or their solicitors, to-wit:

Russell Sage, No. 71 Broadway, in the City of New York.

George J. Gould, No. 71 Broadway, in the City of New York.

Winslow S. Peirce, No. 195 Broadway, in the City of New York.

John F. Dillon, No. 195 Broadway, in the City of New York.

Henry M. Alexander, No. 120 Broadway, in the City of New York.

Charles C. Deming, No. 120 Broadway, in the City of New York.

John A. Stewart, No. 45 Wall street, in the City of New York.

Edward W. Sheldon, No. 45 Wall street, in the City of New York.

William Endicott, Jr., of Boston, Massachusetts.

The Mercantile Trust Company, No. 120 Broadway, in the City of New York.

Alexander & Green, No. 120 Broadway, in the City of New York.

W. W. Green, No. 120 Broadway, in the City of New York.

The Union Trust Company, No. 80 Broadway, in the City of New York.

Wheeler H. Peckham, No. 80 Broadway, in the City of New York.

J. Pierpont Morgan, corner of Wall and Broad streets, in the City of New York.

Edward F. Atkins, of Boston, Massachusetts.

Seward, Guthrie, Morawetz & Steele, of No. 31 Nassau street, in the City of New York.

Wharton & Baird, of the New York Life Building, in the City of Omaha, Nebraska.

The Central Trust Company, No. 54 Wall street, in the city of New York.

Butler, Stillman & Hubbard, No. 54 Wall street, in the city of New York.

Adrian H. Joline, No. 54 Wall street, in the city of New York.

S. H. H. Clark, of St. Louis, Missouri.

Oliver W. Mink, Ames Building, Boston, Massachusetts.

E. Ellery Anderson, No. 27 Williams street, in the city of New York.

Frederic R. Coudert, No. 100 Broadway, in the city of New York.

John W. Doane, No. 45 Wabash avenue, Chicago, Illinois.

The Receivers of the Union Pacific Railway Company, No. 27 Williams street, in the city of New York and of the Ames Building, Boston, Massachusetts.

W. R. Kelly, Union Pacific Building, Omaha, Nebraska.

The Union Pacific Railway Company, having its principal places of business in the said cities of Omaha, Nebraska, and Boston, Massachusetts.

Oliver Ames, Second, and Samuel Carr, Executors, etc., Ames Building, Boston, Massachusetts.

Harwood & Ames, Lincoln, Nebraska.

Oliver Ames, Second, Ames Building, Boston, Massachusetts.

F. Gordon Dexter, Boston, Massachusetts.

Joseph McKenna, Attorney-General of the United States, Washington, District of Columbia.

Judson Harmon, Cincinnati, Ohio.

George Hoadly, No. 22 Williams street, in the City of New York.

John C. Cowin, Ware Block, corner of 15th and Farnam streets, in the City of Omaha, Nebraska.

Louis Fitzgerald, No. 120 Broadway, in the City of New York.

Chauncey M. Depew, Grand Central Station, in the City of New York.

Marvin Hughitt, No. 22 Fifth Avenue, Chicago, Illinois.

T. Jefferson Coolidge, Jr., Ames Building, Boston, Massachusetts.

The Reorganization Committee of the Union Pacific Railway Company, in care of Alvin W. Krech, Secretary, No. 120 Broadway, in the City of New York.

Kuhn, Loeb & Company, No. 27 Pine street, in the City of New York.

Collis P. Huntington, ot the City of New York.

a copy of said petition and of this order thereon, by registered mail, postpaid, at least twenty days before said twentieth day of May.

St. Paul, April 28, 1897.

WALTER H. SANBORN,
Circuit Judge.

EXHIBIT.

54TH CONGRESS, 2d Session. } SENATE. { DOCUMENT No. 88.

AGREEMENT WITH REORGANIZATION COMMITTEE, UNION PACIFIC RAILROAD.

JANUARY 25, 1897.—Referred to the Committee on Pacific Railroads and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ATTORNEY GENERAL, IN RESPONSE TO SENATE RESOLUTION OF JANUARY 23, RELATIVE TO AGREEMENT MADE WITH WHAT IS COMMONLY KNOWN AS THE REORGANIZATION COMMITTEE OF THE UNION PACIFIC RAILROAD COMPANY RESPECTING THE FORECLOSURE OF THE GOVERNMENT LIEN ON THE PROPERTY OF SAID COMPANY, AND CORRESPONDENCE IN CONNECTION THEREWITH.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 23, 1897.

SIR: I have the honor, pursuant to the Senate resolution of this date, to say that an agreement has been made with what is commonly known as the Reorganization Committee of the Union Pacific Railway Company respecting the foreclosure of the Government lien on property of said company. I transmit herewith a copy of the letter of the President of the United States under authority of which the agreement was made and foreclosure proceedings have been commenced, and copies of the correspondence which embodies the agreement.

The names of the gentlemen who comprise the reorganization committee are as follows: Louis Fitzgerald, chairman; Jacob H. Schiff, T. Jefferson Coolidge, jr., Chauncey M. Depew, Marvin Hughitt, Oliver Ames, 2d.

These papers set forth all the information called for by the resolution.

After the closing of the agreement I designated the United States Trust Company of New York as the depositary, and thereupon, upon the 21st instant, the sum of $4,500,000 was deposited therein in conformity with the terms of the agreement. The certificate representing such deposit is now in the hands of the Secretary of the Treasury.

I have the honor to be, with great respect, your obedient servant,

JUDSON HARMON,
Attorney-General.

The President of the Senate.

EXECUTIVE MANSION,
Washington, January 12, 1897.

DEAR SIR: The bill which has been for some time pending before the Congress, providing for the adjustment and extension of the indebtedness of the Pacific railroads to the Government of the United States, has been defeated in the House of Representatives.

In the case of the Union Pacific Railroad and the Kansas Pacific Railroad, a default in the payment of their indebtedness having occurred, and suits having been commenced for the foreclosure of the lien upon said roads which is paramount to the lien and security of the United States, you are hereby directed, pursuant to the provisions of an act of Congress passed March 3, 1887, after taking such precautions and perfecting such arrangements as are possible to assure as far as practicable the payment of their indebtedness to the Government as a result of the suits now pending or others to be instituted, to take such proceedings in the courts as shall be needful to protect and defend the rights and interests of the United States in respect of such indebtedness, and to take steps to foreclose the mortgages or liens of the United States upon the property of these railroad companies.

In the case of the other aided Pacific railroads as to which no foreclosure suits are pending, a different situation is presented, which requires further consideration before deciding the course to be taken by the Government.

Yours, truly,

GROVER CLEVELAND.

Hon. JUDSON HARMON,
Attorney-General of the United States.

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., JANUARY 18, 1897.

SIR: Hon. George Hoadly, special assistant to the Attorney-General, has sent me your letter to him of the 15th instant, making a proposition on behalf of your committee for a guaranteed minimum bid for the property of the Union Pacific and Kansas Pacific railway companies and the Union Pacific sinking fund as a basis for the Government's proceeding to foreclose its lien thereon. I am authorized by the President to commence foreclosure proceedings, as suggested in your proposal, provided it is modified in the following particulars:

(1) In order to preserve the basis of the original informal negotiations, which took place in the absence of an accurate statement of the sinking fund, your offer should be modified so that the amount of the guaranteed bid therein named will be $45,754,059.99, instead of the sum of $45,000,000.

(2) That the following clause of your proposal be eliminated, viz: "and that, to the extent to which the Government may determine the terms of decree, an equal deposit to be made within a reasonable time before sale shall be required as a qualification of any other bidder." While I have no doubt that the court will follow the uniform practice in railway foreclosures of requiring a deposit of all bidders as a guarantee of good faith and security for performance, and while the Government will obviously have the same interest as other parties in having such condition imposed, I do not wish to make a stipulation on that point as a condition of our arrangement.

(3) That your proposal is understood to mean that in case the property mentioned should not be sold as a unit, minimum bids for the separate portions thereof are to be made which in the aggregate will produce to the Government the net sum above mentioned. In case of separate sales the deposit named by you may of course be used for qualification of bidders representing you at each, in such proportions as may be required under the terms of sale.

(4) Your guaranty applies to such sale or sales as shall become effective. The sale of the sinking fund may be judicial or otherwise.

Your acceptance of the above modifications of your proposal will close the arrangement, and I will proceed to institute foreclosure proceedings on behalf of the Government as soon as the deposit named by

you is made, for which, upon receipt of your acceptance, I will designate the depositary.

Very respectfully,

_____ _____,
Attorney General.

LOUIS FITZGERALD, Esq.,
Chairman Reorganization Committee,
Union Pacific Railway Company,
No. 120 Broadway, New York, N. Y.

REORGANIZATION COMMITTEE,
UNION PACIFIC RAILWAY COMPANY,
New York, January, 20, 1897.

Sir: I have your favor of 18th instant, written in reply to my letter of the 15th instant to Hon. George Hoadly, special assistant to the Attorney-General.

On behalf of the reorganization committee of the Union Pacific Railway Company, I have the honor to accept the modifications proposed in your letter of January 18, 1897, to the proposal made in my letter to Hon. George Hoadly dated on the 15th instant.

I am very respectfully,
LOUIS FITZGERALD,
Chairman Union Pacific Reorganization Committee.

HON. JUDSON HARMON,
Attorney-General, Washington, D. C.

NEW YORK, January 15, 1897.

DEAR SIR: Replying, on behalf of the Union Pacific Reorganization Committee, to your favor of the 14th instant, in which you request from this Committee such proposition as it may be willing to make fixing a guaranteed bid at foreclosure and sale for the interest of the United States in the Union Pacific Railway and for the Union Pacific sinking fund, I am authorized to submit to you, and through you to the Executive Department of the Government, the following:

In the event that the Government shall at once take proceedings in the pending foreclosure suits, or by independent bills, for the enforcement of its lien upon the railroad and property of the Union Pacific Railway (which includes the Kansas Pacific line) by sale thereof, and for the sale of the sinking fund in the hands of the Secretary of the Treasury relating to the Union Pacific Railway Company, the Reorganization Committee is prepared to guarantee a minimum bid for the Union and Kansas Pacific lines of railroad and property embfaced within the lien of the Government and for the cash and securities in the United States Union Pacific sinking fund, taken at par, which shall produce to the Government, over and above any prior liens and charges upon the railways and sinking fund, the net sum of $45,000,000.

The Committee is prepared to furnish adequate security for the due performance of the above offer. As such security it will deposit with such national depositary in New York city as may be selected by the proper officers of the Government the sum of $4,500,000 in cash (namely, 10 per cent. of the guaranteed bid), subject to the condition that this deposit may be used, under the terms of the foreclosure decree, as a deposit to qualify such bidders as may act on behalf of the Reorganization Committee, and that to the extent to which the Government may determine the terms of decree, an equal deposit, to be made within a reasonable time before sale, shall be required as a qualification of any other bidder. Should the Government desire to liquidate the sinking fund in advance of sale of the railway property the Reorganization Committee will be prepared to anticipate this feature of

its offer by an earlier purchase of the sinking fund at par of the cash and securities therein contained.

As the provision proposed is one of very considerable magnitude and as the proposition is based upon conditions which now exist, it will be obvious that the reorganization committee must reserve, and it desires to be understood as reserving, the right to withdraw this offer at any time previous to its acceptance by the Government.

I have the honor to be, very respectfully, yours,

LOUIS FITZGERALD,
Chairman of the Reorganization Committee
of the Union Pacific Railway Company.

HON. GEORGE HOADLY,
Special Assistant to Attorney-General,
No. 22 Williams street, New York City.

155 United States Circuit Court, District of Nebraska. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
UNION PACIFIC RAILWAY COMPANY ET AL., Defendants. } No. 157 S. In Equity.

F. GORDON DEXTER and OLIVER AMES, Second, Trustees, Complainant-,
vs.
UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 48 R. In Equity.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *et als.*, Complainants,
vs.
UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 94 Q. In Equity.

Amendments to Petition of Credits Commutation Company for Leave to Intervene in the Above-entitled Causes.

156 To the honorable judges of the circuit court of the United States for the district of Nebraska:

The Credits Commutation Company respectfully asks leave to amend its petition for leave to intervene in the above-entitled causes herein heretofore filed in the following respects, to wit:

First. By inserting in the first line of the second paragraph on page 2, after the word "of," the following:

"The Combination Bridge Company which has recently completed."

Second. By adding at the bottom of page 3 the following:

"Said combination bridge was built for the purpose, among others, of securing connection with the Union Pacific railroad as herein sought; and to that end received a vote of public aid from the city of Sioux City in the sum of about $300,000, and in the articles of incorporation of the aforesaid Combination Bridge Company, said company is empowered to construct, own and operate railways in the States of Iowa and Nebraska; and your petitioner brings this petition in behalf of said bridge company, as well as itself, and purposes and intends to amend in so far as may be necessary, if at all, its own articles of association so as to enable it to incorporate or cause to be incorporated such railroad company or companies as may be necessary to construct, operate and maintain such connecting railroads from its properties aforesaid with the Union Pacific railroad as may be secured to your petitioner in pursuance of this intervention."

Third. By inserting after the word "company" in the third line on page 4, the following:

"and of eleven of the shares of the capital stock of the said com-

pany, (neither said bond nor stock being a party to nor as-
157 senting to any reorganization or sale herein referred to)."

Fourth. By striking out all of paragraph 30 on page 20.

Fifth. By striking out, on page 27, all of paragraph 44 commencing "and your petitioner shows," etc.

Sixth. By striking out in the 8th line of paragraph 47 on page 28, the words "it is not," and by changing the semicolon in the fourth line thereof to a comma.

Seventh. By striking out the word "whatever" in the 9th line of paragraph 47 on page 28, and inserting in lieu thereof the word "whenever."

Eighth. By striking out the words "did not" in the 10th line on page 33, and inserting after the word "act" in the same line, the words "none of."

Ninth. By striking out the word "became" in the 4th line of parapraph 60 on page 33, and inserting in lieu thereof the words "may have become."

Tenth. By adding after the end of the 3rd line on page 37, the following:

"And that all creditors will be held chargeable with knowledge of that fact."

Eleventh. By striking out the words "is also" in the 16th line on page 38, and inserting in lieu thereof the words "was in fact."

Twelfth. By inserting immediately before the words "by said companies" in the 6th line of paragraph 74 on page 43, the words, "for sinking fund purposes," and by striking out the word "its" in the 8th line of said paragraph and inserting in lieu thereof the word "their."

Thirteenth. By striking out the word "not" in the last line of paragraph 84 on page 48.

158 Fourteenth. By inserting at the beginning of paragraph 88 and before the word "your," the following:

"But, if there may be any lawful foreclosure sale."

Fifteenth. By striking out the first word on page 56 and inserting in lieu thereof the word "asks."

Sixteenth. By inserting immediately before the word "authorize" in the 5th line from the bottom on page 65, the words "and could not."

CREDITS COMMUTATION COMPANY,
By JOHN C. COOMBS,
HENRY J. TAYLOR,
Its Solicitors.

Of counsel:
JOHN C. COOMBS,
25 *Equitable Building, Boston, Mass.*
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed May 22, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on said 22nd day of May, 1897, petition of Combination Bridge Company for leave to intervene

was filed in said case, which said petition is in words and figures following, to wit:

159 United States Circuit Court, District of Nebraska. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
UNION PACIFIC RAILWAY COMPANY ET AL., Defendants. } No. 157 S. In Equity.

F. GORDON DEXTER and OLIVER AMES, Second, Trustees, Complainant-,
vs.
UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 48 R. In Equity.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *et als.*, Complainants,
vs.
UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 94 Q. In Equity.

Petition of Combination Bridge Company for Leave to Intervene in the Above-entitled Causes.

To the honorable judges of the circuit court of the United States for the district of Nebraska:

Your petitioner, The Combination Bridge Company, a corporation duly created and organized under the laws of the State of
160 Iowa, having filed with the secretary of the State of Nebraska a true copy of its charter or articles of association and a certified copy of the resolution adopted by its board of directors accepting the provisions of the Nebraska law making foreign corporations domestic, and duly becoming a body corporate also of the State of Nebraska, respectfully prays this honorable court to be permitted to intervene on its own behalf in the above-entitled causes, but in subordination to the intervention of the Credits Commutation Company therein, and especially to intervene should the prayer of the Credits Commutation Company therein on its own behalf be not allowed, or should this petitioner, by reason of standing or otherwise, be found the better entitled so to do, by reason of having built a railroad bridge over the Missouri river from Sioux City, Iowa, to Nebraska, under corporate authority, and with the purpose of securing, as a continuation thereof, railroad connection with the Union Pacific railroad under rights and privileges of existing laws of the United States, or for any other reason.

Your petitioner, on behalf of itself, reaffirms and realleges herein all the statements and allegations made by the Credits Commutation Company in its petition as amended herein to intervene, as com-

pletely as therein stated and with the same force and effect as if herein fully set forth, including all the prayers thereof.

COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
HENRY J. TAYLOR,
Its Solicitors.

Of counsel:
JOHN C. COOMBS,
25 *Equitable Building, Boston, Mass.*
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed May 22, 1897. Oscar B. Hillis, clerk.

161 Thereupon afterwards, to wit, upon the said 22nd day of May, 1897, an order was entered in said cause, and filed May 24th, 1897; which said order is in the words and figures following, to wit:

United States Circuit Court, District of Nebraska. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

OLIVER AMES, 2ND, and SAMUEL CARR, Executors, etc., *et al.*, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

And now this cause coming on to be heard on the petition of the Credits Commutation Company for leave to intervene in the above-entitled causes, and also upon the amendments to said petition presented on the hearing and taken as part of said petition, and also upon the supporting petition of the Combination Bridge Company, also presented to the court on said hearing, and upon the order of this court made on April 28, 1897, upon the said petition of the Credits Commutation Company; and it appearing to the court here that the several parties had been notified of the time and place of said hearing as specified and required by the said order of this court, and there appearing upon this hearing for The Credits Commutation Company and for The Combination Bridge Company, petitioners, Mr. John C. Coombs and Mr. Henry J. Taylor, for the Union Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert, receivers thereof, Mr. John F. Dillon and Mr. W. R. Kelly, for F. Gordon Dexter and Oliver Ames, 2nd, trustees, Mr. Winslow S.

Pierce, and for the United States of America, Mr. George Hoadly and John C. Cowin, and now the court having heard arguments of counsel and being fully advised in the premises, it is —

Ordered, that the prayers of the petitioners for leave to intervene herein be and the same are hereby denied, not as matter of discretion, but because said petitions do not state facts sufficient to
162 show that the petitioners or either of them have a legal right to intervene, and upon prayer of the petitioners an appeal to the circuit court of appeals is hereby allowed. The bond on such appeal is fixed at the sum of one thousand dollars.

Dexter and Ames, trustees, complainants and the United States of America, the Union Pacific Railway Company, and the said receivers by their respective counsel duly excepting to such part of this order as grants an appeal.

WALTER H. SANBORN,
Circuit Judge.

May 22, 1897.

Indorsed: Filed May 24, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on June 28th, 1897, petition for appeal was filed in said case; which said petition is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

UNITED STATES OF AMERICA, Complainants, *vs.* UNION PACIFIC RAILWAY COMPANY; S. H. H. CLARK, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John W. Doane, Receivers, and F. Gordon Dexter and Oliver Ames, Second, Trustees; Union Trust Company of New York, Trustee; J. Pierpont Morgan and Edwin F. Atkins, Trustees; Central Trust Company of New York, Trustee, Defendants.	No. 157 "S." In Equity.

In the Matter of the Petitions of the CREDITS COMMUTATION COMPANY and COMBINATION BRIDGE COMPANY for Leave to Intervene Herein.

Petition for Appeal.

To the honorable circuit court of the United States for the district of Nebraska:

Your petitioners, The Credits Commutation Company, and Combination Bridge Company, petitioners for leave to intervene in the above-entitled cause, each for itself, would respectfully represent and show that in the above-entitled cause, pending in the United States circuit court in and for the district of Nebraska, there was entered at the May term, 1897, under date May 22, 1897, in said court, a final order or decree, greatly to the prejudice of your pe-

titioners, which said order or decree is erroneous and inequitable in many respects.

Wherefore, in order that your petitioners may obtain relief
163 in the premises, and have opportunity to show the errors complained of, your petitioners severally and each for itself prays that it may be allowed an appeal in this cause to the United States circuit court of appeals for the eighth circuit, and that the proper orders touching security required of them may be made.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.,
HENRY J. TAYLOR,
Sioux City, Iowa,
Solicitors and Counsel for Credits Commutation Company and Combination Bridge Company.

Of counsel:
JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed June 28, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on said 28th day of June, 1897, assignment of errors was filed in said case; which said assignment of errors is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

UNITED STATES OF AMERICA, Complainant, *v.* UNION PACIFIC RAILWAY COMPANY; S. H. H. CLARK, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John W. Doane, F. Gordon Dexter, and Oliver Ames, Second, Trustees; Union Trust Company of New York, Trustee; J. Pierpont Morgan and Edwin F. Atkins, Trustees; Central Trust Company of New York, Trustee, Defendants.	No. 157 "S." In Equity.

In the Matter of the Petitions of the CREDITS COMMUTATION COMPANY and COMBINATION BRIDGE COMPANY for Leave to Intervene.

Assignment of Errors on Appeal Severally in Behalf of the Credits Commutation Company and the Combination Bridge Company, Appellants.

On the 28th day of June A. D. 1897, come the undersigned, Credits Commutation Company, and Combination Bridge Company, appellants, by John C. Coombs and Henry J. Taylor, their solicitors and

counsel, and each severally and separately for itself, says that
164 the decree in said cause is erroneous and against the just rights of each of these appellants, and that there is manifest error therein for the following reasons:

1. Because the court erred in denying the petitions of said Credits Commutation Company and said Combination Bridge Company, for leave to intervene herein.

2. Because the court erred in decreeing that the petitions of said Credits Commutation Company and Combination Bridge Company, do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

3. Because the court erred in not granting the petition of the Credits Commutation Company for leave to intervene herein.

4. Because the court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

5. Because the court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

6. Because the court erred in denying the petition of the Combination Bridge Company *of* leave to intervene herein.

Wherefore, these appellants severally pray, each for itself, that the said decree be reversed and that the said court be ordered to enter a decree or order in accordance with the prayers of the respective pleadings of these appellants.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.
HENRY J. TAYLOR,
Sioux City, Iowa,
Solicitors and Counsel for Intervening Petitioners.

Of counsel:
JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed June 28, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 22nd day of July, 1897, appeal bond was filed in said case; which said appeal bond is in words and figures following, to wit:

Know all men by these presents that we, the Credits Commutation Company, and Combination Bridge Company, principals,
165 and F. L. Eaton, and Henry J. Taylor, sureties, are held and firmly bound unto The United States of America, The Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John W. Doane, F. Gordon Dexter and Oliver Ames, Second, trustees, Union Trust Company of New York, trustee, J. Pierpont Morgan and Edwin F. Atkins, trustees and Central Trust Company of New York, trustee, called herein the respondents, in the full and just sum of one thousand dollars

($1,000), to be paid to the said respondents, their successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of June, in the year of our Lord eighteen hundred and ninety-seven.

Whereas lately, at the May term, 1897, of the circuit court of the United States for the district of Nebraska, in a suit pending in said court between the said respondents and the said Credits Commutation Company and Combination Bridge Company, petitioners, for leave to intervene therein, a decree or order was rendered against said Credits Commutation Company and Combination Bridge Company, petitioners, and the said named petitioners have obtained a writ of appeal of the said court to reverse the said order or decree in the aforesaid suit, and a citation directed to the said respondents, citing and admonishing them to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation:

Now, the condition of the above obligation is such that if the said Credits Commutation Company and Combination Bridge Company shall prosecute said appeal to effect and answer all costs if they fail to make good their plea, then the above obligation, which is only a bond for costs and not a supersedeas bond, to be void; else to remain in full force and virtue.

CREDITS COMMUTATION COMPANY, [SEAL.]
By F. L. EATON,
Secretary and General Manager, Principal.
COMBINATION BRIDGE COMPANY, [SEAL.]
By F. L. EATON, *Secretary, Principal.*
F. L. EATON, *Surety.* [SEAL.]
HENRY J. TAYLOR, *Surety.* [SEAL.]

Signed and delivered in the presence of—
E. A. BURGESS.

166 STATE OF IOWA, } ss:
Woodbury County, }

F. L. Eaton and Henry J. Taylor, sureties on the within and foregoing bond, being duly sworn, each for himself severally deposes and says that he is worth, after paying his just debts, more than one thousand dollars, exclusive of property exempt from execution by the laws of the State in which he resides.

F. L. EATON.
HENRY J. TAYLOR.

Subscribed and sworn to before me by the above-named F. L. Eaton and Henry J. Taylor, this 28th day of June, A. D. 1897.

[SEAL.] E. A. BURGESS,
Notary Public within and for Woodbury County, State of Iowa.

The above bond is approved this 22nd day of July A. D. 1897.

W. H. MUNGER,
District Judge.

Approved July 29, 1897.

WALTER H. SANBORN,
Circuit Judge.

Indorsed: Filed July 22, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 29th day of July, 1897, the following order was signed and filed in said case; which said order is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

UNITED STATES OF AMERICA, Complainant,
v.
UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.
} No. 157 "S." In Equity.

CREDITS COMMUTATION COMPANY and COMBINATION Bridge Company, Intervening Petitioners,
v.
UNION PACIFIC RAILWAY COMPANY and All Other Parties to This Suit, Respondents.

And now, on this 29 day of July, 1897, the above cause came on upon the hearing of the petitions of the Credits Commutation Company and the Combination Bridge Company, for the allowance of appeals herein from the order or decree entered herein at the May term, 1897, under date May 22, 1897, denying said parties leave to intervene herein, and in open court, and at the same term
167 thereof at which said order or decree complained of was so entered and rendered by this court, said appeals are hereby allowed, and security for costs fixed at one thousand dollars, and bond therefor now on file is approved.

WALTER H. SANBORN,
Circuit Judge.

Indorsed: Filed July 29, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 29th day of July, 1897, a citation was duly issued in said case, and returned and filed on the said 29th day of July, 1897, the following of which is the original:

UNITED STATES OF AMERICA:

To the United States of America, the Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert, John W. Doane, receivers; F. Gordon Dexter and Oliver Ames, Second, trustees: Union Trust Company of New York, trustee; J. Pierpont Morgan and Edwin F. Atkins, trustees, and Central Trust Company of New York, trustee, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal filed in the office of the circuit court of the United States for the district of Nebraska, wherein The Credits Commutation Company and The Combination Bridge Company are appellants, and you are appellees, to show cause, if any there be, why the order or decree rendered against the said appellants as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Seal United States Circuit Court, District of Nebraska.

Witness the Honorable Walter H. Sanborn, judge of the circuit court of the United States for the district of Nebraska, this 29 day of July, in the year of our Lord, eighteen hundred and ninety-seven.

WALTER H. SANBORN,
Circuit Judge.

U. S. circuit court, district of Nebraska. 157 S. In equity. United States of America *v.* Union Pacific R'y Co. *et al.* Citation. Filed Jul- 29, 1897. Oscar B. Hillis, clerk.

Thereupon, afterwards, to wit, on the 21st day of August, 1897, acceptance of service of citation by Winslow S. Pierce, sol.
168 for Dexter and Ames, trustees, was filed in said case; which said acceptance is (*is*) in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." In Equity.
F. GORDON DEXTER and OLIVER AMES, SECOND, *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." In Equity.
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." In Equity.

Personal service of the citation on appeal on behalf of the Credits Commutation Company and the Combination Bridge Company,

signed by Judge Sanborn, and filed in the above-entitled causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 13th, A. D. 1897.

WINSLOW S. PIERCE,
Sol'r for Dexter & Ames, Trustees.

Indorsed: Filed Aug. 21, 1897. Oscar B. Hillis, clerk.

Thereupon, afterwards, to wit, on said 21st day of August, 1897, acceptance of service of citation by Geo. Hoadly, sp'l ass't to att'y general, was filed in said case; which said acceptance is in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." Equity.	In
F. GORDON DEXTER and OLIVER AMES, SECOND, *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." Equity.	In
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." Equity.	In

Personal service of the citation on appeal on behalf of the Credits Commutation Company and the Combination Bridge Company, signed by Judge Sanborn, and filed in the above-entitled
169 causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 16, A. D. 1897.

GEO. HOADLY,
Special Assistant to the Attorney General in Union Pacific Matters.

Indorsed: Filed Aug. 21st, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the said 21st day of August, 1897, acceptance of service of citation by John C. Cowin, special counsel for the United States, was filed in said case, which said acceptance is in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." Equity.	In
F. GORDON DEXTER and OLIVER AMES, SECOND, v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." Equity.	In
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." Equity.	In

Personal service upon me of the citation on appeal on behalf of the Credits Commutation Company and the Combination Bridge Company, signed by Judge Sanborn, and filed in the above-entitled causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 12th, A. D. 1897.

JOHN C. COWIN,
Special Counsel for United States.

Indorsed: Filed Aug. 21, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 23rd day of August, 1897, acceptance of service of citation by W. R. Kelly, sol'r for U. P. R'y Co., and receivers, was filed in said case, which said acceptance is in words and figures following, to wit:

170 United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." Equity.	In
F. GORDON DEXTER and OLIVER AMES, SECOND, v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." Equity.	In
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc, v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." Equity.	In

Personal service upon me of the citation of appeal on behalf of the Credits Commutation Company and the Combination Bridge Company, signed by Judge Sanborn, and filed in the above-entitled

auses, on the 29th day of July, A. D. 1897, is hereby admitted, and
ie receipt of a copy of said citation is hereby acknowledged.
Dated August 21st, A. D. 1897.

W. R. KELLY,
Counsel for Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

Indorsed: Filed Aug. 23, 1897. Oscar B. Hillis, clerk.

NITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I, Oscar B. Hillis, clerk of the circuit court of the United States
or the district of Nebraska do hereby certify that the foregoing
olios from one (1) to two hundred and three (203), inclusive, con-
ain true and faithful transcripts of all the pleadings, process and
roceedings of record and on file in said court, in the matter of the
etition of Credits Commutation Company and Combination Bridge
ompany, for leave to intervene, filed in the case of The United
tates of America *vs.* The Union Pacific Railway Company *et al.*,
nd that a copy of the citation, duly certified, has been lodged and
emains in my office as such clerk.

eal United States Circuit Court, District of Nebraska.

Witness my hand and the seal of said court at Omaha in said district, this 30th day of August, A. D. 1897.

OSCAR B. HILLIS, *Clerk.*
By R. R. BITTINGER,
Deputy Clerk.

Filed Sep. 9, 1897. John D. Jordan, clerk.

71 And on the ninth day of September, A. D. 1897, an appearance of counsel for the appellants was filed in the clerk's
ffice of said circuit court of appeals in the words and figures fol-
owing:

Jnited States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

CREDITS COMMUTATION CO. ET AL., Appellants,
vs.
UNITED STATES OF AMERICA ET AL. } No. 995.

The clerk will enter *my* appearance as counsel for the appellants.

JOHN C. COOMBS,
25 *Equitable Bldg., Boston, Mass.*
HENRY J. TAYLOR,
Sioux City, Iowa.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 897. No. 995. Credits Commutation Company *et al.*, appellants,

vs. United States of America *et al.* Appearance. Filed Sep. 9, 1897. John D. Jordan, clerk. John C. Coombs, Henry J. Taylor, counsel for appellants.

And on the eighteenth day of October, A. D. 1897, an appearance of Mr. George Hoadly, counsel for appellee The United States was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

CREDITS COMMUTATION CO. ET AL., Appellants,
vs.
UNITED STATES OF AMERICA ET AL. } No. 995.

The clerk will enter my appearance as counsel for The United States of America, appellee.

GEO. HOADLY.

Endorsed: U. S. circuit court of appeals, eighth circuit, May
172 term, 1897. No. 995. Credits Commutation Co. *et al.*, appellants, *vs.* United States of America *et al.* Appearance. Filed Oct. 18, 1897. John D. Jordan, clerk. George Hoadly, counsel for appellee, The United States.

And on the eleventh day of November, A. D. 1897, an appearance of Mr. John C. Cowin, counsel for the United States, was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
UNITED STATES OF AMERICA ET AL. } No. 995.

The clerk will enter my appearance as counsel for the appellee The United States of America.

JOHN C. COWIN,
Special Counsel for the United States.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1897. No. 995. Credits Commutation Co. *et al.*, appellants, *vs.* United States of America *et al.* Appearance. Filed Nov. 11, 1897. John D. Jordan, clerk. John C. Cowin, Omaha, Neb., counsel for appellee.

And on the fifth day of January, A. D. 1898, an appearance of Messrs. John F. Dillon and W. R. Kelly, counsel for the receivers, was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1897.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
UNITED STATES OF AMERICA ET AL. } No. 995.

The clerk will enter *my* appearance as counsel for the appellees, the receivers, &c.

JNO. F. DILLON &
W. R. KELLY.

173 Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1897. No. 995. Credits Commutation Company *et al.*, appellants, *vs.* United States of America. Appearance. Filed Jan. 5, 1898. John D. Jordan, clerk. John F. Dillon, W. R. Kelly, counsel for appellees, rec'rs.

And on the seventh day of December, A. D. 1898, an appearance of counsel for certain appellees was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
THE UNITED STATES OF AMERICA ET AL. } No. 995.

The clerk will enter our appearance as counsel for the appellees.

WINSLOW S. PIERCE,
For F. Gordon Dexter et al.
G. M. LAMBERTSON,
For Receivers of Union Pacific Railway Company and Union Pacific R'y Co.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1898. No. 995. Credits Commutation Company *et al.*, appellants, *vs.* The United States of America *et al.* Appearance. Filed Dec. 7, 1898. John D. Jordan, clerk. Winslow S. Pierce, G. M. Lambertson, counsel for certain appellees.

And on the thirty-first day of December, A. D. 1897, there was filed in the clerk's office of said circuit court of appeals a certain notice and motion to dismiss in words and figures following:

174 STATE OF NEW YORK,
City and County of New York, } *ss.*:

B. W. J. Fox, being duly sworn, deposes and says that he is above the age of twenty-one years and is a citizen and resident of the said State.

That on the 29th day of December, 1897, he served upon the

parties below named a copy of the annexed notice and motion of F. Gordon Dexter and Oliver Ames, Second, trustees, by depositing in the United States post-office in the city of New York copies of said notice and motion, enclosed in sealed envelopes, postage fully prepaid, and addressed respectively as hereinafter shown.

John C. Coombs, Equitable building, Boston, Mass.; Henry J. Taylor, Sioux City, Iowa.

And further affiant sayeth not.

B. W. J. FOX.

Sworn to before me this 29th day of December, 1897.

[SEAL.] JOHN C. SANDERS,
Notary Public, # 8, New York Co.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1897.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees. } No. 996.

Appeals from the circuit court of the United States for the district of Nebraska.

Motion to Dismiss by F. Gordon Dexter and Oliver Ames, Second, Trustees.

175 Now come F. Gordon Dexter and Oliver Ames, Second, trustees, by their counsel, and move the court for orders dismissing the appeals taken in each of the above-entitled cases by The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain causes the jurisdiction of the courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled causes, and the court in denying such application exercised its discretionary powers, and its action cannot be reviewed by this court.

Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

F. GORDON DEXTER AND
OLIVER AMES, SECOND, *Trustees*,
By WINSLOW S. PIERCE,
R. S. HALL, *Their Counsel.*

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1897.

176 THE CREDITS COMMUTATION COMPANY and THE Combination Bridge Company, Appellants, *against* THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

THE CREDITS COMMUTATION COMPANY and THE Combination Bridge Company, Appellants, *against* F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees. } No. 996.

To Messrs. John C. Coombs and Henry J. Taylor, counsel for appellants:

Please take notice that on Monday, the 10th day of January, 1898, at the opening of the court, or as soon thereafter as counsel can be heard, the motion of which the foregoing is a copy will be submitted to the United States circuit court of appeals for the eighth circuit for the decision of the said court thereon.

WINSLOW S. PIERCE,
R. S. HALL,
Counsel for Appellees F. Gordon Dexter and Oliver Ames, Trustees, for the Purpose of This Motion.

Endorsed: U. S. circuit court of appeals, eighth circuit, Dec. term. No. 995. The Credits Commutation Company and The Combination Bridge Company, appellants, against The United States of America *et al.*, appellees, and one other case. Notice of motion to dismiss by F. Gordon Dexter and Oliver Ames, Second, trustees. Filed Dec. 31, 1897. John D. Jordan, clerk.

And on the thirty-first day of December, A. D. 1897, there was filed a certain notice and motion to dismiss by the Union Pacific Railway Company and S. H. H. Clark *et al.*, receivers, in the words and figures following, to wit:

177 STATE OF NEW YORK, } ss:
City and County of New York, }

B. W. J. Fox, being duly sworn, deposes and says that he is ab
the age of twenty-one years and is a citizen and resident of
State.

That on the 29th day of December, 1897, he served upon
parties below named a copy of the annexed notice and motio
the Union Pacific Railway Company and S. H. H. Clark, Ol
W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R.
dert, receivers, by depositing in the United States post-office in
city of New York copies of said notice and motion, enclose
sealed envelopes, postage fully prepaid, and addressed respecti
as hereinafter shown:

John C. Coombs, Equitable building, Boston, Mass.
Henry J. Taylor, Sioux City, Iowa.
And further affiant sayeth not.

B. W. J. FO

Sworn to before me this 29th day of December, 1897.

[SEAL.] JOHN C. SANDERS,
Notary Public, # 8, *New York C*

United States Circuit Court of Appeals, Eighth Circuit, Decem
Term, 1897.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 9

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees. } No. 9

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
178 OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., Appellees. } No. 9

To Messrs. John C. Coombs and Henry J. Taylor, counsel for
pellants:

Please take notice that on Monday, the 10th day of Janu
A. D. 1898, at the opening of the court, or as soon thereafter as c
sel can be heard, the motion, of which the foregoing is a copy,

be submitted to the United States circuit court of appeals for the eighth circuit for the decision of the said court thereon.

JOHN F. DILLON,
WM. R. KELLY,
Counsel for the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1897.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, ET AL., Appellees. } No. 996.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, *et al.*, Appellees. } No. 997.

Appeals from the circuit court of the United States for the district of Nebraska.

Motion to Dismiss by the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

179

Now come the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, receivers, by John F. Dillon and W. R. Kelly, their solicitors, and move the court for orders dismissing the appeals taken in each of the above entitled cases by The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or

deny the application of the appellants for leave to intervene in the above-entitled causes, and the court in denying such application exercised the discretionary powers, and its action cannot be reviewed by this court.

Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

THE UNION PACIFIC RAILWAY COMPANY AND
S. H. H. CLARK,
OLIVER W. MINK,
E. ELLERY ANDERSON,
FREDERIC R. COUDERT, AND
JOHN W. DOANE,
Receivers,
By JOHN F. DILLON,
WM. R. KELLY,
Their Solicitors.

180 Endorsed: U. S. circuit court of appeals, eighth circuit, December term. No. 995. The Credits Commutation Company and The Combination Bridge Company, appellants, against The United States of America *et al.*, appellees, and two other cases. Notice of motion to dismiss by the Union Pacific Railway Company, S. H. H. Clark, *et al.* Filed Dec. 31, 1897. John D. Jordan, clerk.

And on the twenty-eighth day of November, A. D. 1898, there was filed in the clerk's office of said court in said cause a certain notice and amended motion to dismiss in words and figures following, to wit:

181 United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

To John C. Coombs, Esq., Equitable building, Boston, Mass., and to Henry J. Taylor, Esq., Sioux City, Iowa.

GENTLEMEN: Please take notice that we have filed in the circuit court of appeals for the eighth circuit, with the clerk of said court and in the proceeding above entitled, an amended and supple-

mental motion to dismiss the appeal therein, of which the attached is a copy. Counsel for appellees will call up said motion for hearing at 10 o'clock a. m., on Monday, December 5th, 1898, or as soon thereafter as counsel can be heard.

Dated November 25th, 1898.

WINSLOW S. PIERCE,
Counsel for F. Gordon Dexter and Oliver Ames, Second, Trustees.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees.
No. 995.

Amended and Supplemental Motion to Dismiss Appeals.

Appeals from the circuit court of the United States for the district of Nebraska.

Motion to dismiss by F. Gordon Dexter and Oliver Ames, Second, trustees.

Now come F. Gordon Dexter and Oliver Ames, Second, trustees, by Winslow S. Pierce, their solicitors, and move the court for orders dismissing the appeals taken in the above-entitled case by
182 The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled cause, and the court, in denying such application, exercised the discretionary powers and its action cannot be reviewed by this court.

Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

Fifth. Because appellants did not file with the clerk of the court below a petition for the appeal and assignments of errors, as required by the eleventh rule of this court, before the appeal was allowed.

Sixth. Because the appellants did not docket the said appeal and file the record of said case with the clerk of this court and within the time prescribed by section 5 of the fourteenth rule and section 1 of the sixteenth rule of this court.

Seventh. Because the questions arising on the appeal from the denial of the application of the Credits Commutation Company and the Combination Bridge Company to intervene in the court below have become moot, forasmuch as the suit in which said inter-
183 vention was sought has gone to a final decree and the *res* of the action passed from the custody of the court, and because said proposed intervention, if allowed now, would be futile and ineffective, inasmuch as no appeal has been taken from said decree and the time for appeal has elapsed, and in this behalf these appellees ask leave to exhibit certified copies of the records of the court below in the premises.

WINSLOW S. PIERCE,
Counsel for F. Gordon Dexter and Oliver Ames, Second, Trustees.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term. No. 995. The Credits Commutation Company and The Combination Bridge Company, appellants, against The United States of America *et al.*, appellees. Notice of and amended motion to dismiss by F. Gordon Dexter and Oliver Ames, trustees. Filed Nov. 28, 1898. John D. Jordan, clerk.

And on the twenty-eighth day of November, A. D. 1898, there was filed in the clerk's office of said circuit court of appeals in said cause a notice and amended motion to dismiss by the Union Pacific Railway Company and S. H. H. Clark *et al.*, receivers, in words and figures following, to wit:

184 United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

To John C. Coombs, Esq., Equitable building, Boston, Mass., and to Henry J. Taylor, Esq., Sioux City, Iowa.

GENTLEMEN: Please take notice that we have filed in the circuit court of appeals for the eighth circuit, with the clerk of said court and in the proceeding above entitled, an amended and supplemental motion to dismiss the appeal therein, of which the attached is a copy. Counsel for appellees will call up said motion for hearing at

o'clock a. m. on Monday, December 5th, 1898, or as soon there-
r as counsel can be heard.
Dated November 25, 1898.

G. M. LAMBERTSON,
Counsel for the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers.

Jnited States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

E CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
HE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

Amended and Supplemental Motion to Dismiss Appeals.

peals from the circuit court of the United States for the district of Nebraska.

tion to dismiss by the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, nd John W. Doane, receivers.

Now come the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. udert, and John W. Doane, receivers, by their counsel, and move court for orders dismissing the appeals taken in the above en-ed case by The Credits Commutation Company and The Combi-ion Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States the district of Nebraska from which the said appeals are taken ot a final decision of the said circuit court of the United States hin the meaning of section 6 of the act of Congress, approved rch 3, "to define and regulate in certain cases the jurisdiction of courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit rt of the United States for the district of Nebraska to grant or y the application of the appellants for leave to intervene in the ve-entitled causes, and the court, in denying such application, rcised the discretionary powers, and its action cannot be reviewed this court.

Third. Because the appellants were not parties to any of said ts in which intervention was sought and in which the order ealed from was entered.

Fourth. Because the petitions of the Credits Commutation Com-y and the Combination Bridge Company for leave to intervene d the order denying such petitions do not constitute a case within meaning of the Constitution of the United States and of the act Congress of March 3, 1891, establishing the circuit courts of ap-als and defining their jurisdiction.

Fifth. Because appellants did not file with the clerk of the court below a petition for the appeal and assignments of errors, as required by the eleventh rule of this court, before the appeal was allowed.

Sixth. Because appellants did not docket the said appeal and file the record of said case with the clerk of this court as and
186 within the time prescribed by section 5 of the fourteenth rule and section 1 of the sixteenth rule of this court.

Seventh. Because the questions arising on the appeal from the denial of the application of the Credits Commutation Company and the Combination Bridge Company to intervene in the court below have become moot, forasmuch as the suit in which said intervention was sought has gone to a final decree and the *res* of the action passed from the custody of the court, and because said proposed intervention, if allowed now, would be futile and ineffective, inasmuch as no appeal has been taken from said decree and the time for appeal has elapsed, and in this behalf these appellees ask leave to exhibit certified copies of the records of the court below in the premises.

G. M. LAMBERTSON,
Counsel for the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term. No. 995. The Credits Commutation Company and The Combination Bridge Company, appellants, against The United States of America *et al.*, appellees. Notice of and amended motion to dismiss by the Union Pacific Railway Company and S. H. H. Clark *et al.* Filed Nov. 28, 1898. John D. Jordan, clerk.

187 And on the second day of December, A. D. 1898, there was filed in the clerk's office of said circuit court of appeals a notice and motion to dismiss by the United States in words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *v.* THE UNITED STATES OF AMERICA ET AL., Appellees.	No. 995.	Affidavit.

STATE OF NEBRASKA, } *ss*:
County of Douglas, }

John C. Cowin, being first duly sworn, deposes and says that he is special counsel for the United States of America in the above-entitled cause; that as such special counsel, on the 30th day of November, 1898, about the hour of twelve o'clock noon, he de-

posited in the post-office a copy of the notice and motion hereto attached, addressed to Henry J. Taylor, Esquire, Sioux City, Iowa.

JOHN C. COWIN.

Subscribed in my presence and sworn to before me this 30th day of November, A. D. 1898.

[SEAL.] MARY A. SHAW,
Notary Public within and for Douglas County, Nebraska.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *vs.* THE UNITED STATES OF AMERICA *et al.*, Appellees.	No. 995. Notice of Motion to Dismiss Appeal.

To John Coombs, Esquire, Equitable building, Boston, Mass., and to Henry J. Taylor, Esquire, Sioux City, Iowa.

GENTLEMEN: Please take notice that on behalf of the
188 United States of America I have filed in the circuit court of appeals for the eighth circuit, with the clerk of said court and in the proceedings above entitled, a motion to dismiss the appeal therein, of which a copy is hereto attached.

Said motion will be called up for hearing at ten o'clock a. m. on Monday, December 5, 1898, at the court-room, at St. Louis, or as soon thereafter as counsel can be heard.

Dated Nov. 30th, 1898.

JOHN C. COWIN,
Special Counsel for United States.

United States — Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *v.* THE UNITED STATES OF AMERICA *et al.*, Appellees.	No. 995. Motion to Dismiss Appeals.

Appeals from the circuit court of the United States for the District of Nebraska.

Motion to Dismiss Appeals by the United States of America.

Now comes the United States of America, by John C. Cowin, its counsel, and move the court for orders dismissing the appeals taken in the above-entitled cause by The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, 1891, defining and regulating in certain cases the jurisdiction of the courts of the United States and for other purposes.

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled cause, and the court in denying such application exercised the discretionary powers, and its action cannot be reviewed by this court.

189 Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

Fifth. Because the appellants did not file with the clerk of the court below a petition for the appeal and assignments of errors, as required by the eleventh rule of this court, before the appeal was allowed.

Sixth. Because the appellants did not docket the said appeal and file the record of said case with the clerk of this court as and within the time prescribed by section 5 of the fourteenth rule and section 1 of the sixteenth rule of this court.

Seventh. Because the questions arising on the appeal from the denial of the application of the Credits Commutation Company and the Combination Bridge Company to intervene in the court below have become moot, forasmuch as the suit in which said intervention was sought has gone to a final decree, and the *res* of the action passed from the custody of the court, and because said proposed intervention, if allowed now, would be futile and ineffective, inasmuch as no appeal has been taken from said decree and the time for appeal has elapsed, and in this behalf these appellees ask leave to exhibit certified copies of the records of the court below in the premises.

Eighth. Because said applications to intervene and the said appeals are attempted proceedings and litigation on the part of the petitioners against the United States of America, which have never consented that such proceedings be brought against them, but have objected and still do object to the same.

JOHN C. COWIN,
Special Counsel for the United States of America.

190 Endorsed: No. 995. United States circuit court, eighth circuit, December term, 1898. The Credits Commutation Company and The Combination Bridge Company, appellants, *v.*

United States of America *et al.*, appellees. Notice and motion by United States to dismiss the appeals. Filed Dec. 2, 1898. John D. Jordan, clerk. John C. Cowin, special counsel for the United States.

191 And on the second day of December, A. D. 1898, there was filed in the clerk's office of said circuit court of appeals a certificate of clerk as to time of filing assignment of errors in words and figures following, to wit:

United States Circuit Court, District of Nebraska. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
UNION PACIFIC RAILWAY COMPANY ET AL., Defendants. } No. 157 S. In Equity.

Additional and Supplemental Transcript of Record to Correct Original Transcript of Record in United States Circuit Court of Appeals for Eighth Circuit.

Pleas before the Honorable Walter H. Sanborn, judge of the circuit court of the United States for the eighth judicial circuit, sitting in the circuit court of the United States for the district of Nebraska, within the said eighth judicial circuit, at the May term, A. D. 1897.

Be it remembered that on the 28th day of June, 1897, the Credits Commutation Company and Combination Bridge Company filed in said case their assignment of errors and their petition for appeal set out in the original abstract now on file in the said United States court of appeals, and said assignment of errors was filed with the clerk of this court at the same time as and with said petition for appeal.

UNITED STATES OF AMERICA, *District of Nebraska*, } *ss:*

I, Oscar B. Hillis, clerk of the circuit court of United States for the district of Nebraska, do hereby certify that the above contains a true and faithful statement and transcript of the time and fact of the filing in said court of the said assignment of errors and petition for appeal in the matter of the petition of Credits Commutation Company and Combination Bridge Company for leave to intervene, filed in the case of United States of America *vs.* Union Pacific Railway Company *et al.*

192 Witness my hand and the seal of said circuit court, at Omaha, in said district, this 30th day of November, A. D. 1898.

[SEAL.] OSCAR B. HILLIS, *Clerk.*

[Cancelled 10c. internal-revenue stamp.]

Endorsed: 995. Credits Commutation Co. *et al.*, appellants, *vs.* The United States of America *et al.* Certificate of clerk as to time of filing assignment of errors. Filed Dec. 2, 1898. John D. Jordan, clerk.

And on the seventh day of December, A. D. 1898, in the record of the proceedings of said circuit court of appeals is an order of submission of said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

WEDNESDAY, *December* 7, 1898.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
THE UNITED STATES OF AMERICA ET AL. } No. 995.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause came on this day to be heard upon the several motions to dismiss filed herein, and Judge Sanborn, being disqualified, retired and took no part in the hearing. Thereupon the motions to dismiss were argued by Mr. Winslow S. Pierce and Mr. G. M. Lambertson in support thereof, and by Mr. John C. Coombs in opposition thereto, and thereupon the said motions were submitted and by the court taken under advisement.

And on the seventh day of December, A. D. 1898, an opinion of said United States circuit court of appeals was filed in said cause in the following words, to wit:

193 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *vs.* THE UNITED STATES OF AMERICA ET AL., Appellees.	No. 995. Appeal from the Circuit Court of the United States for the District of Nebraska.
THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *vs.* F. GORDON DEXTER and OLIVER AMES, Second, *et al.*, Appellees.	No. 996. Appeal from the Circuit Court of the United States for the District of Nebraska.
THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company Appellants, *vs.* OLIVER AMES, SECOND, and SAMUEL Carr, Executors of the Last Will and Testament of Frederick L. Ames, Deceased, *et al.*, Appellees.	No. 997. Appeal from the Circuit Court of the United States for the District of Nebraska.

Mr. Winslow S. Pierce and Mr. G. M. Lambertson (Mr. Lawrence Greer was with them on the brief) for the motion.

Mr. John C. Coombs and Mr. Henry J. Taylor, *contra.*

Before Caldwell and Thayer, circuit judges.

Per Curiam:

These cases are before the court on the present occasion on motions to dismiss the several appeals. The appeals were taken from orders made by the Honorable Walter H. Sanborn, circuit judge, which denied the application of The Credits Commutation Company and The Combination Bridge Company, the appellants, for leave to intervene in three suits which were at the time pending in the circuit court of the United States for the district of Nebraska. One
194 of these suits was a bill filed on October 9, 1893, by Oliver Ames, Second, and Samuel Carr, executors of the last will and testament of Frederick L. Ames, deceased, *et al.*, against the Union Pacific Railway Company, *et al.*, which is commonly termed "the stockholders' suit;" the other was a bill which was filed on January 21, 1895, by F. Gordon Dexter and Oliver Ames, Second, trustees, against the Union Pacific Railway Company, *et al.*, for the purpose of foreclosing the first mortgage on the Union Pacific railway; and the third was a bill filed on January 23, 1897, by the United States against the Union Pacific Railway Company, *et al.*, for the purpose of foreclosing its statutory lien upon the property of said railway company.

On April 28, 1897, when said cases were about ripe for a final decree, the Credits Commutation Company and the Combination Bridge Company presented an intervening petition to Judge Sanborn, and asked leave to file the same in each of said suits, and thereby become parties thereto. On the presentation of the intervening petition an order was made requiring all parties in interest in said suits to show cause, on a day specified, why the prayer of the petitioners for leave to intervene should not be granted. On the return day of said order, objections to the filing of said intervening petition having been duly made and considered, it was ordered "that the prayers of the petitioners for leave to intervene herein, be, and the same are hereby denied, not as a matter of discretion, but because said petitions do not state facts sufficient to show that the petitioners, or either of them, have a legal right to intervene." From this order which was entered at the same time and in the same form in each of the above cases the present appeals were taken.

The ground upon which the petitioners below, who are the appellants here, sought leave to intervene in the pending litigation against the Union Pacific Railway Company, was as follows:

The Credits Commutation Company alleged that it was entitled as beneficiary in a deed of assignment, to three-fourths of the capital stock of the Sioux City & Northern Railway Company, which was a railroad extending northwardly from Sioux City, Iowa, for a distance of about one hundred miles to a junction with the Great Northern railroad in the State of Minnesota; that it was also entitled to all the stock of the Sioux City, O'Neill & Western railroad, which was a road extending westwardly from Sioux City, Iowa, to O'Neill, Nebraska, a distance of about one hundred and thirty miles; that these roads were connected at Sioux City, Iowa, by a bridge across the Missouri river, whose capital stock was all owned by the Credits Commutation Company; that the petitioners proposed to extend the Sioux City, O'Neill & Western railroad to a junction with the Union Pacific railroad in the western part of the State of Nebraska; that their ultimate design was to form a line of transportation by means of the aforesaid railroad and bridge companies, and certain terminal properties in Sioux City which the petitioners then owned, and thereby promote an interchange of traffic between the head of the Great Lakes at Duluth, and the region of country lying west of the Missouri river opposite to Sioux City. They further averred in the intervening complaint that by virtue of various provisions of the act creating the Union Pacific Railway Company and the amendments thereof, particularly by sections 14 and 15 of the act of July 1, 1862, (12 Stat., 489, c. 120) and by section 17 of the act of
195 July 2, 1864, (13 Stat., 356, c. 216) * * * the right was accorded to the petitioners to form a junction with the Union Pacific railroad not farther west than the one hundredth meridian of longitude, whenever they should have completed their proposed line of railroad through the States of Iowa *or* Minnesota to Sioux City, and thence southwestwardly to a point on the main line of the Union Pacific railroad. In view of the foregoing facts, the petitioners craved leave to intervene and be made parties to the

three suits then pending against the Union Pacific Railway Company, to the end that they might, in the first place, resist and if possible prevent a foreclosure sale of the property and franchises of said railroad company under decrees made in the pending suits, or if defeated in that object, to the end that they might preserve their alleged right to connect their proposed line of railroad with the main line of the Union Pacific Railway Company, by appropriate provisions inserted in the decree of foreclosure, provided a foreclosure sale of the latter company's property and franchise should eventually be ordered.

The motion to dismiss the several appeals is grounded on the proposition that the order from which the several appeals were taken was not a final judgment or decree from which an appeal will lie to this court, and upon the further proposition that the action of the lower court in refusing leave to intervene is not reviewable on appeal, inasmuch as it rested in the sound discretion of the chancellor to admit or reject the intervention. Both of these positions are, in our opinion, well taken. The order denying leave to intervene was not final within any of the definitions usually given of a final order or decree, inasmuch as it did not dispose of the petitioners' alleged right to form a junction with the main line of the Union Pacific railroad, which was the substantial right asserted, but left them at full liberty to litigate that question by an original bill, or by any other method of procedure which they saw fit to adopt. The trial court could not, and did not, finally adjudicate any of the questions which were presented by the intervening complaint, for the reason that it refused to give the petitioners a standing in court to be heard with respect to such questions, and also refused to permit the intervening complaint to be filed and become a part of the record. None of the issues, therefore, which were tendered by the petitioners in their intervening complaint ever passed under judicial review in such a manner as to estop the petitioners from tendering like issues on any future occasion, because the trial court refused to allow such issues to be incorporated into the pending suits in such a form that they could be tried and determined. When such action is taken, that is to say, when leave to intervene in an equity case is asked and refused, the rule, so far as we are aware, is well settled that the order thus made denying leave to intervene is not regarded as a final determination of the merits of the claim on which the intervention is based, but leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding. Such orders not only lack the finality which is necessary to support an appeal, but it is usually said of them that they cannot be reviewed because they merely involve an exercise of the discretionary powers of the trial court. *Ex parte Cutting*, 94 U. S., 14; *Hamlin v. Continental Trust Company of the City of New York*, 47 U. S. App., 422, 428, 429; 78 Fed. Rep., 664; *Jones & Laughlins, Limited, v. Sands*,
196 51 U. S. App., 153, 157; 79 Fed. Rep., 913; *In re Streett, petitioner*, 8 U. S. App., 645, 650; 62 Fed. Rep., 218.

It is doubtless true that cases may arise where a denial of the right of a third party to intervene therein would be a practical denial of

certain relief to which the intervener is fairly entitled, and can only obtain by an intervention. Cases of this sort are those where there is a fund in court undergoing administration, to which a third party asserts some right which will be lost in the event that he is not allowed to intervene before the fund is dissipated. In such cases an order denying leave to intervene is not discretionary with the chancellor, and will generally furnish the basis for an appeal, since it finally disposes of the intervener's claim by denying him all right to relief. The cases at bar, however, are not of that character. The petitioners were under no obligation to intervene in the litigation against the Union Pacific Railway Company to preserve their alleged right to form a junction with the road of that company when they should have completed their own road to a suitable junction point. The question which they sought to litigate in the pending litigation could, we think, with more propriety and with less difficulty, have been litigated by an independent bill, after they had completed, or were about completing their line to a suitable junction point. Prior to that time the questions which they sought to raise by means of the intervening petition were speculative questions, which the lower court, as we think, very properly refused to consider or determine.

It was suggested in argument that as the lower court saw fit to insert a clause in its order that it had not refused leave to intervene "as a matter of discretion," but because the petitioners had no legal right to intervene, therefore the motion to dismiss is not tenable, so far as it is based on the discretionary character of the order. The answer to this suggestion is that the trial court by inserting such a clause in its order explanatory thereof, could not give an effect to the order which was in any respect different from the effect which it had by virtue of the nature of the proceeding in which the order was made. The intervening petition merely invoked the discretionary power of the court, and it could exercise no other power in the premises, whatever the purpose of the court or its own declaration on the subject may have been. The fact is that the lower court simply exercised its discretionary authority in denying leave to intervene, and it did not succeed in rendering a judgment upon the merits of the petitioners' claim which will conclude them in any subsequent suit, although it may have intended to do so. As it is now well settled since the decision in *McLish v. Roff*, 141 U. S., 661, that an appeal will only lie to this court from orders or decrees which are final in their character, and which involve something more than the exercise of purely discretionary powers (except in some cases for which special provision is made by the seventh section of the act under which this court was created, 26 Stat., 826, c. 517)—it follows that the appeals cannot be entertained, and that the motions to dismiss the same must be sustained. It is so ordered.

Filed December 7, 1898.

197 And on the seventh day of December, A. D. 1898, in the record of the proceedings of said circuit court of appeals is a decree in said cause in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

WEDNESDAY, *December* 7, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
vs.
THE UNITED STATES OF AMERICA, THE UNION PACIFIC Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert, John W. Doane, Receivers; F. Gordon Dexter and Oliver Ames, Second, Trustees; Union Trust Company of New York, Trustee; J. Pierpont Morgan and Edwin F. Atkins, Trustees, and Central Trust Company of New York, Trustee. } No. 995.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Nebraska and upon the several motions and amended motions to dismiss filed by appellees and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that said motions be, and the same are hereby, sustained, and that the appeal from the said circuit court in this cause be, and the same is hereby, dismissed with costs, and that the United States of America, the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert, John W. Doane, receivers; F. Gordon Dexter and Oliver Ames, Second, trustees; Union Trust Company of New York, trustee; J. Pierpont Morgan and Edwin F. Atkins, trustees, and Central Trust Company of New York, trustee, have and recover against the Credits Commutation Company and the Combination Bridge Company the sum of twenty dollars for their costs herein and have execution therefor.

To which ruling, order, and decree the appellants, by their
198 counsel, at the time duly excepted and still except.

Thereupon the appellants in open court prayed an appeal to the Supreme Court of the United States, which is hereby allowed.

December 7, 1898.

199 And on the twentieth day of February, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals in said cause a petition for appeal in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *vs.* UNITED STATES OF AMERICA ET AL., Appellees.	No. 995	Petition for Appeal.

To the honorable circuit court of appeals for the eighth circuit:

Your petitioners, Credits Commutation Company and Combination Bridge Company, appellants, each for itself would respectfully represent and show that in the above-entitled cause, pending in the United States circuit court of appeals for the eighth circuit, there was entered at the December term, 1898, under date December 7, 1898, in said court, a final order or decree greatly to the prejudice of your petitioners; which said order or decree is erroneous and inequitable in many respects.

Wherefore, in order that your petitioners may obtain relief in the premises and have opportunity to show the errors complained of, your petitioners severally and each for itself prays that it may be allowed an appeal in this cause to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and that a transcript of the record, proceedings, and papers in said cause, duly authenticated, may be sent to the Supreme Court of the United States, and that proper orders touching security required of them may be made.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS AND
HENRY J. TAYLOR,
Their Solicitors and Counsel.

Endorsed: No. 995. United States circuit court of appeals,
200 eighth circuit, December term, 1898. Credits Commutation Company and The Combination Bridge Company, appellants, *vs.* United States of America *et al.*, appellees. Petition for appeal. Filed Feb. 20, 1899. John D. Jordan, clerk.

And on the twentieth day of February, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals in said cause an assignment of errors in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and THE COMBINATION Bridge Company, Appellants,
vs.
UNITED STATES OF AMERICA ET AL., Appellees.
} No. 995.

Assignment of Errors on Appeal Severally in Behalf of the Credits Commutation Company and the Combination Bridge Company.

On the 20th day of February, A. D. 1899, come the undersigned, Credits Commutation Company and Combination Bridge Company, appellants, by John C. Coombs and Henry J. Taylor, their solicitors and counsel, and each severally and separately for itself says that the order or decree entered in said cause in the circuit court of the United States for the district of Nebraska is erroneous and against the just rights of each of these appellants, and that there is manifest error therein for the following reasons:

1. Because the court erred in denying the petitions of said Credits Commutation Company and said Combination Bridge Company for leave to intervene herein.

2. Because the court erred in decreeing that the petitions of said Credits Commutation Company and Combination Bridge Company do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

201 3. Because the court erred in not granting the petition of the Credits Commutation Company for leave to intervene herein.

4. Because the court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

5. Because the court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

6. Because the court erred in denying the petition of the Combination Bridge Company for leave to intervene herein.

And further severally and separately each for itself says that the decree or order in said cause made and entered on the 7th day of December, 1898, in said United States circuit court of appeals for the eighth circuit is erroneous and against the just rights of each of these appellants, and that there is manifest error therein for the following reasons:

7. Because the court erred in denying the petition of said Credits Commutation Company and said Combination Bridge Company for leave to intervene herein.

8. Because the court erred in decreeing that the petitions of said Credits Commutation Company and Combination Bridge Company do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

9. Because the court erred in not granting the petition of the Credits Commutation Company for leave to intervene herein.

10. Because the court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

11. Because the court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

12. Because the court erred in denying the petition of the Combination Bridge Company for leave to intervene herein.

13. Because the court erred in its final order and decree herein under date of December 7, 1898, in sustaining appellees' motions to dismiss the appeal from the circuit court of the United States for the district of Nebraska, and in dismissing said appeal.

202 Wherefore these appellants severally pray, each for itself, that the said decree or order of said circuit court and that the said decree or order of the said United States circuit court of appeals be reversed, and that the said courts be ordered to enter a decree or order in accordance with the prayers of the respective pleadings of these appellants.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
HENRY J. TAYLOR,
Their Solicitors and Counsel.

Endorsed: No. 995. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and Combination Bridge Company, appellants, *vs.* United States of America *et al.*, appellees. Assignment of errors on appeal severally in behalf of the Credits Commutation Company and Combination Bridge Company. Filed Feb. 20, 1899. John D. Jordan, clerk.

And on the twentieth day of February, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals an appeal bond in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *vs.* UNITED STATES OF AMERICA ET AL., Appellees.	No. 995. Appeal Bond.

Know all men by these presents that we, the Credits Commutation Company and Combination Bridge Company, principals,
203 and F. L. Eaton and Henry J. Taylor, sureties, are held and firmly bound unto The United States of America, The Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John W. Doane, F. Gordon Dexter and Oliver Ames, Second, trustees; Union Trust Company of New York, trustee; J. Pierpont Morgan and Edwin F. Atkins, trustees, and Central Trust Company of New York, trustee, *et al.*,

called herein the appellees, in the full and just sum of one thousand dollars ($1,000), to be paid to the said appellees, their successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 20th day of February, in the year of our Lord eighteen hundred and ninety-nine.

Whereas lately, at the December term, 1898, of the United States circuit court of appeals for the eighth circuit, in a suit depending in the said circuit court of appeals between the said appellees and the said Credits Commutation Company and Combination Bridge Company, a decree or order was rendered against the said Credits Commutation Company and Combination Bridge Company, and the said named appellants having obtained a writ of appeal and filed a copy thereof in the clerk's office of the said court to reverse said order or decree in the aforesaid suit, and a citation having been issued directed to the said appellees, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, the third Monday of March next:

Now, the condition of the above obligation is such that if the said appellants shall prosecute their appeal to effect and answer all costs if they fail to make good their plea, then the above obligation, which is only a bond for costs and not a supersedeas bond, to be void; else to remain in full force and virtue.

CREDITS COMMUTATION COMPANY,
By F. L. EATON, *Sec'y.*
COMBINATION BRIDGE COMPANY,
By F. L. EATON, *Sec'y.*
F. L. EATON. [L. S.]
HENRY J. TAYLOR. [L. S.]

Sealed and delivered in the presence of—

——— ———.

204 UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, Western Division, }

F. L. Eaton and Henry J. Taylor, being duly sworn, depose and say and each for himself saith that he is worth one thousand dollars over and above all just debts, liabilities, and exemptions.

F. L. EATON.
HENRY J. TAYLOR.

Sworn to this 16th day of February, 1899, before me—
[SEAL.] E. A. BURGESS,
Notary Public, within and for Woodbury County, State of Iowa.

The above bond and the sureties thereto approved this 20th day of February, 1899.

AMOS M. THAYER,
HENRY C. CALDWELL,
Circuit Judges.

Endorsed: No. 995. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and Combination Bridge Company, appellants, *vs.* United States of America *et al.* Appeal bond. Filed Feb. 20, 1899. John D. Jordan, clerk.

And on the twentieth day of February, A. D. 1899, in the record of the proceedings of said circuit court of appeals is an order allowing appeal in said cause in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

MONDAY, *February* 20, 1899.

CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants, *vs.* UNITED STATES OF AMERICA ET AL., Appellees. } No. 995. Allowance of Appeal.

And now, on this 20th day of February, 1899, the above cause came on upon the hearing of the petitions of the Credits Commutation Company and the Combination Bridge Company for the allowance of appeals herein from the order or decree entered herein
205 at the December term, 1898, under date December 7, 1898, and now, in open court, at the same term thereof at which said order or decree complained of was so entered and rendered by this court, said appeals are hereby allowed and security for costs fixed at one thousand dollars ($1,000), and the bond therefor now on file is approved.

(Signed) HENRY C. CALDWELL,
AMOS M. THAYER,
Circuit Judges.

And on the fifteenth day of March, A. D. 1899, a citation was filed in the clerk's office of said circuit court of appeals in said cause; which citation, with proof of service thereon, is hereto attached and herewith returned:

206 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and THE Combination Bridge Company, Appellants, *vs.* UNITED STATES OF AMERICA ET AL., Appellees. } No. 995. Citation.

The United States of America to said appellees:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of March next, pursuant to a writ of appeal filed in the clerk's office of the United States circuit court of appeals for the

eighth circuit, wherein The Credits Commutation Company and Combination Bridge Company are appellants and you are appellees, to show cause, if any there be, why the decree rendered against said appellants herein and in the circuit court of — United States for the district of Nebraska should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry C. Caldwell, judge of the United States circuit court of appeals for the eighth circuit, this 20th day of February, 1899.

HENRY C. CALDWELL,
Circuit Judge.

207 STATE OF NEW YORK, } ss:
County and City of New York, }

I served the hereto-annexed citation on Winslow S. Pierce by handing a copy of the same to him at number 120 Broadway, in the city of New York, State of New York.

BERT HANSON.

Subscribed and sworn to before me and in my presence this 9th day of March, 1899.

[Seal of Morris I. Price, Notary Public, New York County.]

MORRIS I. PRICE,
Notary Public in and for the City, County, and State of New York.

208 STATE OF NEBRASKA, } ss:
County of Douglas, }

I served the hereto-annexed citation on William R. Kelly by handing a true copy of the same to him, at the city of Omaha, in the State of Nebraska, on the 14th day of March, 1899.

E. A. BURGESS.

Subscribed and sworn to before me and in my presence this 14th day of March, 1899.

{ Notarial Seal of Francis J. Mieding, Douglas County, Nebraska. Commission Expires 4, 23, 1901. }

FRANCIS J. MIEDING,
Notary Public within and for Douglas County, Nebraska.

STATE OF NEBRASKA, } ss:
County of Lancaster, }

I served the hereto annexed citation on G. M. Lambertson by handing a true copy of the same to him, at the city of Lincoln, in the State of Nebraska, on the 13th day of March, 1899.

E. A. BURGESS.

Subscribed and sworn to before me and in my presence this 13th day of March, 1899.

{ Notarial Seal of Emma L. Frow, Lancaster County, Nebraska. Commission Expires May 21, 1900. }

EMMA L. FROW,
Notary Public within and for Lancaster County, Nebraska.

209 United States Circuit Court of Appeals for the Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and COMBINATION Bridge Company, Appellants, *vs.* UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

CREDITS COMMUTATION COMPANY and COMBINATION Bridge Company, Appellants, *vs.* DEXTER, AMES, ET AL., Appellees. } No. 996.

CREDITS COMMUTATION COMPANY and COMBINATION Bridge Company, Appellants, *vs.* AMES and CARR ET AL., Appellees. } No. 997.

Admission of Service of Citation.

Personal service of citation of appeal to the Supreme Court of the United States in the above-entitled causes is admitted this 28 day of February, 1899, and the receipt of a copy of said citation purporting to be signed by Henry C. Caldwell, circuit judge, on the 20th day of February, 1899, is acknowledged.

JOHN C. COWIN,
Special Counsel for United States.

[Endorsed:] No. 995. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and The Combination Bridge Company, appellants, *vs.* United States of America *et al.*, appellees. Citation. Filed Mar. 15, 1899. John D. Jordan, clerk.

210 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals, eighth circuit, do hereby certify that the foregoing two hundred and nine pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in the case of The Credits Commutation Company and The Combination Bridge Company, appellants, *vs.* The United States of America *et al.*, appellees, No.

995, December term, 1898, as the same remain on file and of record in my said office.

I further certify that the original citation, with proof of service thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this fifteenth day of March, A. D. 1899.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

{ Ten-cent U. S. internal-revenue stamp, canceled Mar. 15, 1899. John D. Jordan. }

Endorsed on cover: Case No. 17,326. U. S. C. C. of appeals, 8th circuit. Term No., 233. The Credits Commutation Company and The Combination Bridge Co., appellants, *vs.* The United States *et al.* Filed March 18th, 1899.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 234.

THE CREDITS COMMUTATION COMPANY AND THE COMBINATION BRIDGE COMPANY, APPELLANTS,

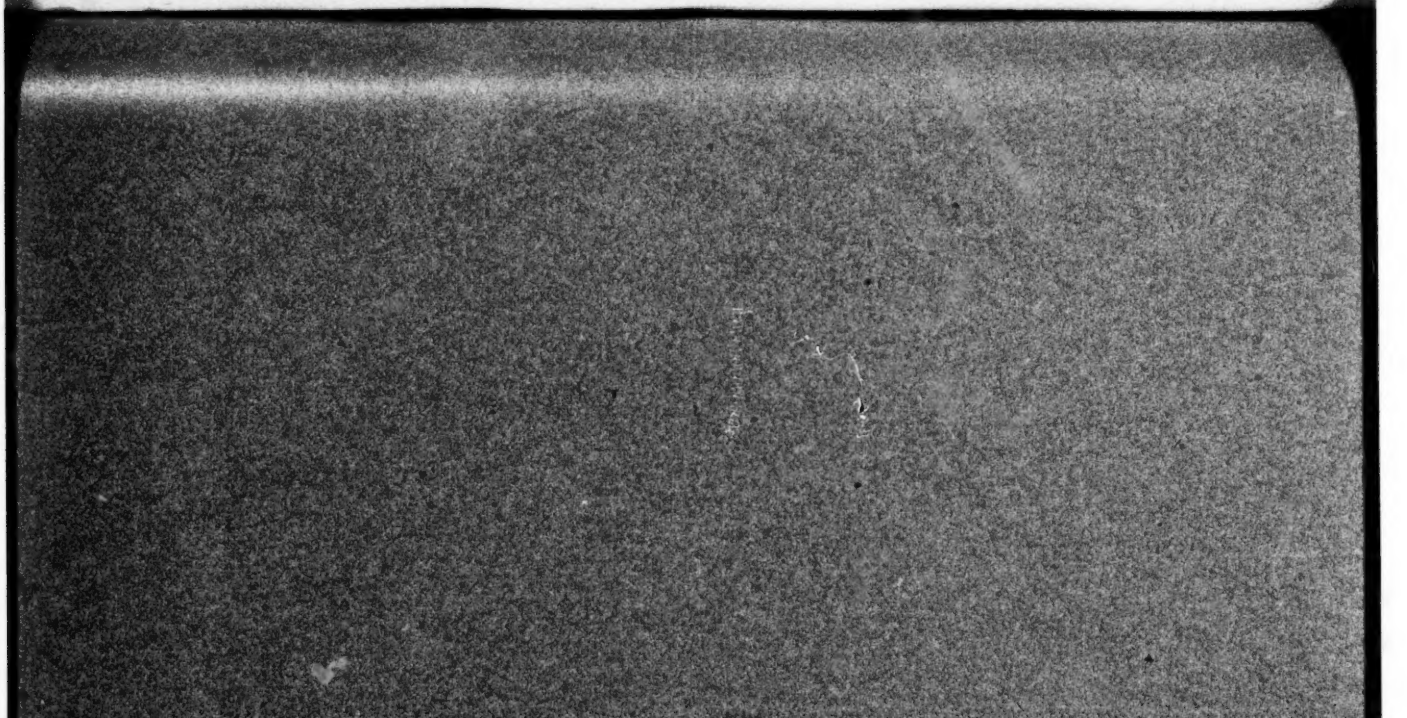
vs.

F. GORDON DEXTER AND OLIVER AMES, SECOND, TRUSTEES, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED MARCH 13, 1899.

(17,327.)



(17,327.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 234.

THE CREDITS COMMUTATION COMPANY AND THE COMBINATION BRIDGE COMPANY, APPELLANTS,

vs.

F. GORDON DEXTER AND OLIVER AMES, SECOND, TRUSTEES, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print.
Caption to transcript	*a*	1
Transcript from United States circuit court	1	1
Caption to transcript	1	1
Bill of complaint	1	2
Exhibit A—First mortgage of Union Pacific Railway Company to Edwin D. Morgan, Nov. 1, 1865	31	27
B—Agreement between Union Pacific Railway Company and Edwin D. Morgan *et al.*, March 12, 1868	41	36
C—Order appointing receivers	42	37
D—Order appointing additional receivers	46	40
Separate answer of Union Pacific Railway Company	48	42
Separate answer of S. H. H. Clark *et al.*, receivers, etc	56	49
Petition of Credits Commutation Company for leave to intervene	61	53
Section 15 of the act of Congress of July 1, 1862	67	59
Section 14 of the act of Congress of July 1, 1862	70	62

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 1, 1899.

	Original.	Print.
Section 17 of the act of Congress of July 2, 1864	70	62
Section 15 of the act of Congress of July 2, 1864	72	64
Section 17 of the act of Congress of 1862	78	70
Section 12 of the act of Congress of 1862	79	71
Portion of act of Congress of March 3, 1869	79	71
Section 18 of the act of Congress of July 1, 1862	82	74
Section 10 of the act of Congress of May 7, 1878	87	79
Section 6 of the act of Congress of July 1, 1862	88	80
Portion of section 5 of the act of Congress of July 1, 1862	89	81
Section 11 of the act of Congress of May 7, 1878	89	81
Abstracts of argument of the railroad company in the case of United States *vs.* Union Pacific Railroad Company	89	81
Section 4 of the act of Congress of March 3, 1887	92	84
Portion of opinion of Supreme Court in the case of United States *vs.* Union Pacific Railroad Company, 91 U. S., 72	97	89
Portion of opinion of Supreme Court in the case of Union Pacific Railroad Company *vs.* United States, 99 U. S., 700	97	90
Portion of opinion in the case of United States *vs.* Western Union Telegraph Company, 50 Fed. Rep., 42	98	90
Remarks of Stuyvesant Fish before House committee	98	90
Portion of report of Senate Committee on Pacific Railroads	98	91
Portion of report of author of the commission bill introduced in the House of Representatives	99	91
Portion of report of the minority of the House committee	99	91
Portion of act of Congress of March 3, 1873	100	92
Portion of act of Congress of 1862 in respect to the lien of the Government bonds	106	98
Amendment of 1864, authorizing the first-mortgage bonds	106	98
Portion of decision of Supreme Court in Union Pacific Railway Company *vs.* United States, 99 U. S., 402	106	98
Portion of opinion of Supreme Court in Union Pacific Railway Company *vs.* United States, 99 U. S., 700	116	108
Portion of opinion of Supreme Court in United States *vs.* Union Pacific Railway Company, 160 U. S., 1	120	112
Portion of section 15 of the act of Congress of July 1, 1862	121	113
Section 6 of the act of Congress of June 19, 1878	122	114
Section 18 of the act of Congress of July 1, 1862	123	115
Arrangement between reorganization committee and Kuhn, Loeb & Company	130	122
Representation made to the stockholders to surrender stock to the reorganization committee	131	123
Representation made to bondholders and stockholders	131	123
Representation made by the reorganization committee to the security-holders	132	124
Remarks of Senator Brice before United States Senate committee	142	134
Portion of report of Senate committee of April 8, 1897	148	140
Portion of report of majority of House committee of February 11, 1897	148	140
Portion of report of the minority of the House committee	148	140
Order on respondents to show cause why Credits Commutation Company should not be permitted to intervene	159	151

	Original	Print.
Report of the attorney general to the Senate, January 23, 1897	163	155
Letter, Grover Cleveland to attorney general, January 12, 1897	164	156
Letter, attorney general to Louis Fitzgerald, chairman, January 18, 1897	164	156
Letter, Louis Fitzgerald, chairman, to attorney general, January 20, 1897	165	157
Letter, Louis Fitzgerald, chairman, to special assistant to attorney general, January 15, 1897	165	157
Amendments to petition of Credits Commutation Company for leave to intervene	167	159
Petition of Combination Bridge Company for leave to intervene	171	161
Order denying petitions for leave to intervene	173	162
Petition for appeal	175	164
Assignment of errors	176	165
Bond on appeal	177	167
Order allowing appeal	180	169
Citation	180	170
Admission of service of citation	182	171
Clerk's certificate to transcript	184	173
Appearance of counsel for appellants	185	174
Mr. Hoadly for the United States	185	174
Mr. Cowin for the United States	186	174
Mr. Dillon and Mr. Kelly for the receivers	186	175
Mr. Pierce and Mr. Lambertson for certain appellees	187	176
Proof of service of notice of motion to dismiss	188	176
Motion of F. Gordon Dexter *et al.* to dismiss	188	177
Notice of motion to dismiss	190	178
Notice and motion of Union Pacific Railway Company and receivers to dismiss	191	180
Notice and amended motion of Dexter *et al.* to dismiss	195	182
Notice and amended motion of Union Pacific Railway Company and receivers to dismiss	198	184
Proof of notice and notice by United States of motion to dismiss	201	185
Motion of United States to dismiss	202	186
Certificate of clerk as to time of filing assignment of errors	205	188
Order: Cause submitted	207	189
Opinion of United States circuit court of appeals	207	189
Decree of United States circuit court of appeals	212	194
Petition for appeal	214	195
Assignment of errors	215	196
Bond on appeal	217	198
Order allowing appeal	219	199
Citation	221	200
Clerk's certificate to transcript	224	202

Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the December term, 1898, of said court, begun and held at the United States court-house, in the city of St. Louis, Missouri, on the first Monday in December, to wit, the fifth day of December, A. D. 1898, before the Honorable Henry C. Caldwell and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the ninth day of September, A. D. 1897, a transcript of record, pursuant to an appeal allowed by the circuit court of the United States for the district of Nebraska, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit; which said transcript of record is in the words and figures following, to wit:

Pleas before the Honorable Walter H. Sanborn, judge of the circuit court of the United States for the eighth judicial circuit, sitting in the circuit court of the United States for the district of Nebraska, within the said eighth judicial circuit, at the term of May, A. D. 1897.

Be it remembered that on the 21st day of Jan'y, 1895, bill of complaint was filed in the clerk's office of said circuit court, in the case of F. Gordon Dexter *et al. vs.* The Union Pacific Railway Company *et al.*, which said bill is in the words and figures following, to wit:

Bill for Foreclosure of First Mortgage Union Pacific Railroad Co.

In the United States Circuit Court for the District of Nebraska.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, Complainants,

vs.

THE UNION PACIFIC RAILWAY COMPANY, THE UNITED STATES OF America, The Union Trust Company of New York; J. Pierpont Morgan and Edwin F. Atkins, Trustees; The Central Trust Company of New York, Trustee; The Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company; The Union Pacific, Lincoln & Colorado Railway Company; The Chicago & Northwestern Railway Company, The Omaha & Republican Valley Railway Company; The Chicago, St. Paul, Minneapolis & Omaha Railway Company; The Kearney & Black Hills Railway Company; Frank H. Peavy, E. C. Michener, and Charles T. Peavy, Copartners, under the Firm Name and Style of F. H. Peavy & Company; The Union Pacific, Denver & Gulf Railway Company; The Chicago, Milwaukee & St. Paul Railway Company; The Salina & Southwestern Railway Company; The Chicago, Rock Island & Pacific Railway Company; The Chicago, Kansas & Nebraska Railway Company; The Missouri Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Defendants.

Bill of complaint.

Winslow S. Pierce, 195 Broadway, New York city; R. S. Hall, Omaha, Neb., solicitors and of counsel for complainants.

2 To the honorable the judges of the circuit court of the United States for the district of Nebraska, in the eighth circuit, sitting in equity:

F. Gordon Dexter and Oliver Ames, Second, citizens and residents of the State of Massachusetts, bring this their bill of complaint against the Union Pacific Railway Company, a corporation organized and existing under the laws of the United States of America; the United States of America; the Union Trust Company of New York, a corporation organized and existing under the laws of the State of New York; J. Pierpont Morgan, a citizen and resident of the State of New York, and Edwin F. Atkins, a citizen and resident of the State of Massachusetts, trustees; the Central Trust Company of New York, a corporation organized and existing under the laws of the State of New York, trustee; the Central Pacific Railroad Company, a corporation organized and existing under the laws of

the State of California; the Southern Pacific Company, a corporation organized and existing under the laws of the State of Kentucky; the St. Joseph & Grand Island Railroad Company, a corporation organized and existing under the laws of the State of Kansas; the Kansas City & Omaha Railroad Company, a corporation organized and existing under the laws of the State of Nebraska; the Oregon Railway & Navigation Company, a corporation organized and existing under the laws of the State of Oregon; the Oregon Short Line & Utah Northern Railway Company, a consolidated corporation, organized and existing under the laws of the States of Wyoming, Idaho, Oregon, Montana and the Territory of Utah; the Union Pacific, Lincoln & Colorado Railway Company, a consolidated corporation, organized and existing under the laws of the State of Kansas; the Chicago & Northwestern Railway Company, a corporation organized and existing under the laws of the State of Wisconsin; the Omaha & Republican Valley Railway Company, a corporation organized and existing under the laws of the State of Nebraska; the Chicago, St. Paul, Minneapolis & Omaha Railway Company, a corporation organized and existing under the laws of the State of Wisconsin; the Kearney & Black Hills Railway Company, a corporation organized and existing under the laws of the State of Nebraska; Frank H. Peavy, E. C. Michener and Charles T. Peavey, copartners under the firm name and style of F. H. Peavy & Company, and citizens and residents of the State of Minnesota; the Union Pacific, Denver & Gulf Railway Company, a consolidated corporation, organized and existing under the laws of the States of Colorado and Wyoming; the Chicago, Milwaukee & St. Paul Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, and a domestic corporation of the State of Ne-
3 braska; the Salina & Southwestern Railway Company, a corporation organized and existing under the laws of the State of Kansas; the Chicago, Rock Island & Pacific Railway Company, a corporation organized and existing under the laws of the States of Illinois and Iowa; the Chicago, Kansas & Nebraska Railway Company, a corporation organized and existing under the laws of the States of Kansas and Colorado; the Missouri Pacific Railway Company, a corporation organized and existing under the laws of the State of Missouri, and S. H. H. Clark, a citizen and resident of the State of Missouri; Oliver W. Mink, a citizen and resident of the State of Massachusetts; E. Ellery Anderson and Frederick R. Coudert, citizens and residents of the State of New York, and John W. Doane, a citizen and resident of the State of Illinois.

And thereupon humbly complaining, your orators show unto your honors as follows:

First. That your orators F. Gorden Dexter and Oliver Ames Second, are citizens and residents of the State of Massachusetts.

That the defendant The Union Pacific Railway Company is a corporation created by and existing under certain laws of the United States, to wit: An act of Congress entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean and to secure to the Government the use of the

same for postal, military and other purposes," approved July 1st, 1862; also an act of Congress amendatory thereof, approved July 2d, 1864, and other acts of the Congress of the United States, amendatory thereof and supplemental thereto. That the said Union Pacific Railway Company was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in said several acts of the Congress of the United States, by the consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, each of said three companies being named and described in the congressional legislation embraced in said acts; and the said Union Pacific Railway Company, so created by consolidation as aforesaid, thereupon became successor to each and all of the said constituent companies, and thereby became vested with all the rights, titles, interests, properties and franchises of each and all of said constituent companies. That the said Union Pacific Railway Company has and maintains its general office and principal place of business in the city of Omaha, in the State and district of Nebraska. Your orators pray leave to refer to each and every act of Congress of the United States which are hereinbefore and hereinafter mentioned with the same
4 force and effect as if said acts were herein set out at length.

That the said defendant The Union Pacific Railway Company owns a line of railway extending from Council Bluffs in the State of Iowa, westerly through the States of Nebraska and Wyoming into the Territory of Utah to a point about five miles west of Ogden, and a connection with the Central Pacific railroad mentioned in said acts of Congress, a distance of about 1,042.93 miles; and also a line of railway extending from Kansas City in the State of Missouri, westerly through the State of Kansas and into the State of Colorado to Denver, a distance of about 639 miles; and also a line of railway extending from Denver in the State of Colorado, in a northerly direction to Cheyenne in the State of Wyoming, a distance of about 106 miles, together with certain terminal extensions and spur tracks and branches used in connection therewith, making a total mileage of 1,829 miles or thereabouts owned by said Union Pacific Railway Company.

Second. That the Union Pacific Railroad Company (the mortgagor in the first mortgage of November 1st, 1865, of which your orators are successor trustees, which is hereinafter more fully referred to) was duly incorporated and organized under and by virtue of said acts of the Congress of the United States of July 1st, 1862, and of July 2d, 1864, and the other acts of Congress of the United States amendatory thereof and supplemental thereto, which are hereinbefore referred to.

That in and by said act of Congress of July 1st, 1862, the said Union Pacific Railroad Company was authorized and empowered to lay out, locate, construct, furnish, maintain and enjoy a continuous railroad and telegraph with the appurtenances commencing at a point on the one hundredth meridian of longitude west of Greenwich, between the south margin of the valley of the Republican

river and the north margin of the valley of the Platte river, in the Territory of Nebraska, at a point to be fixed by the President of the United States after actual surveys; thence running westerly upon the most direct, central and practicable route through the territories of the United States to the western boundary of the Territory of Nevada, there to meet and connect with the line of the Central Pacific Railroad Company of California.

Section 14 of said act of July 1, 1862, authorized and required the said Union Pacific Railroad Company to construct a single line of railroad and telegraph from a point on the western boundary of the State of Iowa to be fixed by the President of the United States upon the most direct and practicable route to be subject to his approval so as to form a connection with the lines of said company at some point on the one hundredth meridian of longitude aforesaid from the point of commencement on the western boundary of the State of Iowa upon the same terms and conditions in all respects as were in said act contained for the construction of said railroad and telegraph line above mentioned.

That said act of July 1, 1862, granted the right of way through the public lands of said railroad company for the construction of said railroad and telegraph line, and the right, power and authority to said company to take from the public lands adjacent to the line of said road, earth, stone, timber and other materials for the construction thereof; said right of way so granted to said railroad company being to the extent of 200 feet in width on each side of its railroad where it should pass over the public lands, including all necessary grounds for stations, buildings, workshops and depots, machine shops, switches, side tracks, turn-tables and water stations.

That section 5 of said act provided that for the purposes therein mentioned the Secretary of the Treasury should, upon the certificate in writing of certain commissioners (the appointment and duties of whom were in said act provided) of the completion and equipment of forty consecutive miles of said railroad and telegraph in accordance with the provisions of said act, issue to said railroad company bonds of the United States of $1,000 each, payable in thirty years after date bearing six per centum per annum interest (said interest payable semi-annually), which interest might be paid in United States Treasury notes or any other money or currency which the United States had or should declare lawful money and a legal tender, to the amount of sixteen of said bonds per mile for such section of forty miles; and to secure the repayment to the United States as in said act provided of the amount of said bonds so issued and delivered to said railroad company, together with all interest thereon which should have been paid by the United States.

Said act further provided that the issue of said bonds and the delivery to the said company should *ipso facto* constitute a first mortgage on the whole line of the railroad and telegraph property, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds might be issued.

Section 11 of said act of July 1, 1862, provided that for 300 miles

of the road of the said Union Pacific Railroad Company most mountainous and difficult of construction, to wit, 150 miles westwardly from the eastern base of the Rocky mountains and
6 150 miles eastwardly from the western base of the Sierra Nevada mountains, said points to be fixed by the President of the United States, the bonds to be issued in aid of the construction of said road should be treble the number per mile in said act before provided (to wit, $48,000 per mile instead of $16,000 per mile), and that the same should be issued on the certificate of said commissioners as in said act before provided, that twenty consecutive miles of the said road were completed; and that between the sections last named of 150 miles each the bonds to be issued to aid in the construction should be double the number per mile first mentioned (to wit, $32,000 instead of $16,000 per mile), and that the same should be issued upon the construction of every twenty miles thereof upon the certificate of the said commissioners as aforesaid that twenty consecutive miles of the same were completed; provided that no more than 50,000 of said bonds should be issued under said act to aid in constructing the main line of said railroad and telegraph.

Section 10 of said act of July 2, 1864 (amendatory of said act of July 1, 1862), provided that said section 5 of said act of July 1, 1862, be so modified and amended that the Union Pacific Railroad Company might, on the completion of each section of its road as provided in said act of July 2, 1864, and in said act of July 1, 1862, issue its first-mortgage bonds on its railroad and the telegraph line to an amount not exceeding the amount of the bonds of the United States and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said company; and that the lien of the United States bonds should be subordinate to that of the bonds of said railroad company in said act authorized to be issued on its road, property and equipments, except as to the provisions of the sixth section of the said act of July 2d, 1862, relating to the transmissions of dispatches and the transportation of mails, troops, munitions of war, supplies and public stores for the Government of the United States; and further provided that said section 5 of said act of July 1st, 1862, be further amended by striking out the word "forty" and inserting in lieu thereof the words "on each and every section of not less than twenty."

That in and by an act of Congress of the United States, approved March 3d, 1865, it was enacted that section 10 of said (*of*) act of July 2d, 1864 (being the section of said last-mentioned act the provisions whereof are last hereinabove set forth) be so modified and amended as to allow the said The Union Pacific Railroad Company, among other companies, to issue its six per centum 30-year bonds, interest payable in lawful money of the United States,
7 upon its separate road, and to issue its bonds to the extent of 100 miles in advance of a continuous completed line of construction.

That by an act of the Congress of the United States, approved

July 3d, 1866, the said Union Pacific Railroad Company, with the consent and approval of the Secretary of the Interior, was authorized to locate, construct and continue their road from Omaha in Nebraska Territory westward, according to the best and most practicable route and without reference to the initial point on the one hundredth meridian of west longitude, as then provided by law, in a continuous completed line until they should meet and connect with the Central Pacific Railroad Company of California, and the said Central Pacific Railroad Company of California, with like consent and approval, was authorized to locate, construct and continue its road eastward in a continuous completed line until they should meet and connect with the Union Pacific railroad.

Third. That, pursuant to provisions of the congressional legislation hereinbefore recited, the President of the United States by executive orders, dated November 17th, 1863, and March 7th, 1864, duly fixed the eastern terminus of the Union Pacific railroad on the Iowa bank of the Missouri river; and thereafter and prior to the date of the consolidation hereinafter mentioned the said Union Pacific Railroad Company constructed and completed its line of railroad and telegraph, with the appurtenances thereto belonging, from Council Bluffs in the State of Iowa, westerly through the States (then Territories) of Nebraska, Colorado and Wyoming, and into the Territory of Utah to a connection with the railroad of the said Central Pacific Railroad Company at a point about five miles west of Ogden in said Territory of Utah, a distance of 1,042.93 miles, more or less, including a bridge over the Missouri river between said Council Bluffs in the State of Iowa and Omaha in the State of Nebraska; all of which lines of railroad and telegraph and bridge, with the appurtenances thereof, were constructed as, in the manner, upon the conditions, within the time and upon the approvals and consents contemplated, defined and prescribed in said congressional legislation; and all of which said line of railroad, telegraph, bridge and appurtenances are, as your orators are advised and aver, embraced in and included in the first mortgage of the said Union Pacific Railroad Company of November 1st, 1865, of which your orators are successor trustees, as hereinafter stated.

Fourth. Your orators further aver that on or prior to the 1st day of November, 1865, the said The Union Pacific Rail-
8 road Company, being duly authorized by law, to wit, by the acts of the Congress of the United States hereinbefore referred —, to borrow money and issue its bonds for the objects and purposes in said acts mentioned and to execute a mortgage to secure the payment thereof, which said bonds and mortgage by said acts of Congress were made the first lien unto which the lien of the bonds issued by the Government in aid of the construction of said railroad were by said acts made subordinate; and being desirous of borrowing a sum of money which should be equal to the amount per mile of United States bonds provided by said acts to be issued to said company for each and every mile of its said railroad then completed and to be thereafter completed, and of securing by mortgage the payment of its corporate bonds to be issued and negotiated therefor,

did, under, and pursuant to such lawful authority conferred by said acts of Congress, duly determine and resolve to make, execute, issue, negotiate and deliver, under its corporate seal, its corporate bonds, from time to time, and severally payable to bearer, for the sum of $1,000 each, thirty years after the date thereof, with semi-annual interest at the rate of six per centum per annum from the date thereof, to an amount equal and not exceeding per mile the amount provided to be issued by the Government of the United States to aid in the construction of said railroad; each of said bonds so to be issued to bear date of the time of its issue and to be in form and be certified and have coupons annexed as set forth and shown in the first mortgage hereinafter mentioned, copy whereof is attached hereto as part of this bill of complaint and marked Exhibit "A."

And in pursuance of the determination and resolution aforesaid, and of due corporate action, and as thereunto duly authorized by law, the said Union Pacific Railroad Company did thereafter duly make, execute and issue under its corporate seal, and did deliver to various persons, firms and corporations, for value and for the considerations and purposes and in the manner provided in said first mortgage, its bonds to the number of 27,229, in the aggregate amount of $27,229,000, which said bonds bore date and by their terms matured as hereinafter set forth, and in each of which the said Union Pacific Railroad Company promised to pay the sum of $1,000 to the holder thereof at its office in the city of New York thirty years after the date thereof, and also interest thereon at the rate of six per centum per annum, payable semi-annually from the date thereof, in lawful money of the United States, until the principal sum be paid, on presentation of the interest coupons annexed thereto at the office of the said company in the city of New York. A copy of each of said bonds (except as to the serial number, date and the
9 signatures of the officers of the said railroad company) is set forth and included in the said first mortgage, copy whereof is, as aforesaid, attached hereto as part hereof.

Fifth. Your orators further state that, pursuant to the said determination and resolution of the said Union Pacific Railroad Company and to due corporate action of said company and as thereunto authorized by law, and pursuant to authority so conferred by acts of Congress, as aforesaid, and for the purposes in said resolution and determination specified, and to secure the payment of the said bonds so to be issued by said railroad company and of the interest to grow due thereon, the said Union Pacific Railroad Company did, on or about the 1st day of November, 1865, duly make and execute under its corporate seal, and did deliver to Edwin D. Morgan, of the city of New York, and Oakes Ames, of Easton, in the State of Massachusetts, as trustees, a mortgage or deed of trust, dated on said 1st day of November, 1865, wherein and whereby the said Union Pacific Railroad Company did bargain, sell, assign, transfer and set over, enfeoff, convey and confirm unto the said Edwin D. Morgan and Oakes Ames, as trustees, and in trust for the purposes aforesaid, and to the survivor of them and to their successor or succes-

sors, all and singular the railroad, telegraph, property and franchises in said mortgage described as follows:

"All and singular the railroad and telegraph of the said party of the first part (the said Union Pacific Railroad Company), heretofore constructed, or hereafter to be constructed, from a point on the western boundary of the State of Iowa, heretofore fixed by the President of the United States, pursuant to the terms and provisions of said acts of Congress, to wit, at the city of Omaha, in the Territory of Nebraska; thence, as provided in said acts of Congress, through the Territories of the United States to the western boundary of the late Territory of Nevada, together with all its lands, tenements, hereditaments, rights of way and easements, acquired or appropriated, or which shall be hereafter acquired or appropriated, for the purpose of a right of way for a single, double, or other track, railroad and telegraph line, and for depots, engine-houses, car-houses, station-houses, warehouses, machine shops, superstructures, erections and fixtures, being necessary for the use of said railroad or telegraph; and also all and singular the franchises now owned, possessed or acquired, or which shall be hereafter owned, possessed or acquired, by the said party of the first part, for the purpose of building and operating said railroad and telegraph above specified and described; and also all the rails, depots, yards, engine-houses, car-houses, station-houses, warehouses, machine shops, workshops and fixtures of said party of the first part; and also all goods and chattels now owned, or which shall hereafter be owned or acquired, by said party of the first part, necessary to said railroad or telegraph line, or the running and operating the same."

A copy of said mortgage is attached hereto as part hereof, marked Exhibit "A."

Sixth. That subsequently and on or about the 12th day of March, 1868, the said Union Pacific Railroad Company made and entered into an agreement or indenture supplemental to said first mortgage of November 1st, 1865, with said Edwin D. Morgan and Oakes Ames, trustees, dated on said March 12th, 1868, wherein and whereby the said Union Pacific Railroad Company, for good and valuable consideration therein expressed, agreed with the said Edwin D. Morgan and Oakes Ames, trustees, for the benefit of all who then were or should thereafter be holders of said first-mortgage bonds, and to and with the successors of said trustees in the trust created by said indenture of mortgage of November 1st, 1865, that the principal of all said first-mortgage bonds, being $1,000 each, as well such as had then been issued as such as should thereafter be issued, should and would be paid by the said railroad company whensoever they should respectively become payable, according to the tenor thereof, in the gold coin of the United States at par, that is to say, $1,000 of such coin for each of said bonds. That thereafter the said Union Pacific Railroad Company, or said successor company, the Union Pacific Railway Company, did, as your orators are informed and believe, stamp or caused to be stamped upon all or substantially all of the said bonds issued under and secured by said first

mortgage of November 1st, 1865, a provision to the effect that the same should be payable in United States gold coin. That a copy of said agreement or supplemental indenture of March 12th, 1868, is attached hereto and made part hereof, marked Exhibit "B."

Seventh. Your orators further show that the said Edwin D. Morgan and Oakes Ames, trustees as aforesaid under said first mortgage of November 1st, 1865, duly accepted said mortgage and the trusts thereunder, and continued to be and act as the trustees thereof until their deaths, respectively. That on the 8th day of May, 1873, the said Oakes Ames died, and on December 3d, 1873, Oliver Ames was duly appointed trustee in the place and stead of said Oakes Ames; and the said Oliver Ames afterwards, to wit, on the 9th day of March, 1877, died; and on June 1st, 1881, Frederick L. Ames was duly appointed trustee in the place and stead of said
11 Oliver Ames. That on the 14th day of February, 1883, Edwin D. Morgan died; and on March 6th, 1883, F. Gordon Dexter was duly appointed successor trustee in the place and stead of said Edwin D. Morgan. That on the 13th day of September, 1893, Frederick L. Ames died, and on October 12th, 1893, Oliver Ames, Second, was duly appointed trustee under said mortgage in the place and stead of said Frederick L. Ames. Each of the said trustees, original and successor, duly accepted said mortgage and the trusts thereunder, and said F. Gordon Dexter and Oliver Ames, Second, your orators herein, now are the trustees under said mortgage.

Eighth. Your orators further aver that said $27,229,000 of first-mortgage bonds, issued by the said Union Pacific Railroad Company and secured by said mortgage of November 1st, 1865, of which your orators are successor trustees as aforesaid, were, as your orators are informed and believe, duly certified by the original trustees under said mortgage and were, prior to any succession in said trusteeship, duly issued, negotiated and delivered as, in the manner and for the considerations and purposes, and upon the conditions provided and defined in and by the provisions of said first mortgage; and that all of said bonds are and were, prior to the defaults hereinafter recited, outstanding in the hands of the persons to whom the same were issued, or their successors in interest.

That the bonds so issued and outstanding bear date and mature respectively as follows:

Said bonds to the amount of six million four hundred and seventy-five thousand dollars are dated on the first day of January, 1866, and the principal thereof will mature on the first day of January, 1896.

Said bonds to the amount of one million five hundred and ninety-eight thousand dollars are dated on the first day of January, 1867, and the principal thereof will mature on the first day of January, 1897.

Said bonds to the amount of one million nine hundred and twenty thousand dollars are dated on the first day of July, 1867, and the principal thereof will mature on the first day of July, 1897.

Said bonds to the amount of five million nine hundred and

ninety-nine thousand dollars are dated on the first day of January, 1868, and the principal thereof will mature on the first day of January, 1898.

Said bonds to the amount of eight million eight hundred and thirty-seven thousand dollars are dated on the first day of
12 July, 1868, and the principal thereof will mature on the first day of July, 1898.

Said bonds to the amount of two million four hundred thousand dollars are dated on the first day of January, 1869, and the principal thereof will mature on the first day of January, 1899.

Ninth. Your orators aver that the said defendant, The Union Pacific Railway Company, made default in the payment of all of the interest and of the coupons representing such interest which became due on said first-mortgage bonds on the first day of July, 1894, although, as your orators are informed and believe, payment of said interest and coupons, or of some, or some portion thereof, was duly demanded by holders of said bonds, and that said default continued in whole until on or about the 27th day of November, 1894, when the receivers hereinafter mentioned offered to pay said defaulted interest at the face of the coupons representing the same, but not including interest accrued upon said coupons; and that a portion of such defaulted interest and of said coupons, the amount whereof your orators cannot accurately state, has been paid by said receivers at the face of said coupons, but that no part of the interest accrued upon said defaulted coupons has been paid or tendered by the said receivers or by the Union Pacific Railway Company or by any person on behalf of either, or otherwise, but all of the interest upon said defaulted coupons remains due and unpaid.

Your orators further aver that no part of the interest and of the coupons representing the interest which became due on each and all of said outstanding first-mortgage bonds, on the first day of January, 1895, was paid by the defendant, The Union Pacific Railway Company, or by said receivers, or by any one in their behalf or in behalf of either of them, or otherwise; but that said defendant railway company wholly made default in the payment of said interest and coupons which fell due on said bonds on the first day of January, 1895, and the same and every part thereof has ever since remained unpaid and in default, although payment of said interest and coupons, or of some part or some thereof, has, as your orators are informed and believe, been duly demanded.

Tenth. Your orators further show that on the 9th day of October, 1893, Oliver Ames, Second (one of your orators herein), and Samuel Carr, citizens and residents of the State of Massachusetts, as executors of the last will and testament of Frederick L. Ames, deceased, and Peter B. Wyckoff, a citizen and resident of the State of New York, and Edwin F. Atkins, a citizen and resident of the
13 State of Massachusetts, filed in this court a bill of complaint against the Union Pacific Railway Company and others in a certain cause entitled as follows:

Circuit Court of the United States for the Eighth Judicial Circuit, District of Nebraska.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors of the Last Will and Testament of Frederick L. Ames, Deceased, and Peter B. Wyckoff and Edwin F. Atkins, Complainants,

vs.

THE UNION PACIFIC RAILWAY COMPANY, THE ATCHISON, COLORADO and PACIFIC Railway Company, The Atchison, Jewell County and Western Railway Company, The Boulder Valley and Central City Wagon Road Company, The Bozeman Coal Company, The Callaway Improvement Company, The Carbon Cut-off Railway Company, The Central Branch Union Pacific Railroad Company, The Denver, Leadville and Gunnison Railway Company, The Green River Water Works Company, The Junction City and Fort Kearney Railway Company, The Kansas Central Railroad Company, The Kansas City and Omaha Railroad Company, The Kearney and Black Hills Railway Company, The Laramie, North Park and Pacific Railroad and Telegraph Company, The Lawrence and Emporia Railway Company, The Loveland Pass Mining and Railroad Tunnel Company, The Montana Railway Company, The Morrison Stone, Lime and Town Company, The Omaha and Republican Valley Railway Company, The Oregon Railway and Navigation Company, The Oregon Short Line and Utah Northern Railway Company, The St. Joseph and Grand Island Railroad Company, The Salina and Southwestern Railway Company, The Solomon Railroad Company, The Union Land Company, The Union Pacific, Denver and Gulf Railway Company, The Union Pacific, Lincoln and Colorado Railway Company, and The Union Pacific Coal Company, Defendants.

That the title of said bill was subsequently amended by orders of court by the interlineation of the names of the following additional defendants:

The Cascade Railroad Company, The Columbia & Palouse Railroad Company, The Mill Creek Flume and Manufacturing Company, The Oregon Railway Extensions Company, The Walla Walla & Columbia River Railroad Company, The Washington & Idaho Railroad Company, The Wood River Improvement Company, The Echo & Park City Railway Company, The Rattlesnake Creek Water Company, and The Boise City Railway and Terminal Company.

14 That in and by said last-mentioned bill of complaint (hereinafter, for convenience, called the "Ames bill"), the complainants in said cause, the title whereof is last above recited (which said cause is hereinafter, for convenience, styled the "Ames cause") represented and showed to this court that the Union Pacific Railway Company (being the same company as The Union Pacific Railway Company, one of the defendants herein) was created by and existed under certain laws of the United States, to wit, the acts of

Congress hereinbefore in that behalf referred to, and that the remaining defendants in said bill were incorporations organized and existing respectively under the laws of several States, namely, Kansas, Colorado, Montana, Nebraska, Wyoming, Oregon, the Territory of Utah and the Territory of New Mexico; and that the defendant, The Union Pacific Railway Company, was owner of large amounts in value of the shares of stock and bonds of said several other defendant corporations, and operated the railroads, telegraphs and properties thereof through and by virtue of such ownership of securities and by contracts and arrangements, the particulars whereof are fully set forth in said Ames bill. Said bill further represented and showed that the complainants therein were re-pectively the holders in various amounts of the stock, bonds and obligations of the said Union Pacific Railway Company and of many of the said other corporations defendants in said bill. Said bill further alleged in detail the stock capitalization, bonded and mortgage indebtedness, guarantees and floating obligations and liabilities of the defendants therein, and particularly alleged the several mortgages of the Union Pacific Railway Company, covering, embracing or effecting the railroads and properties embraced in said first mortgage of the Union Pacific Railroad Company of November 1, 1865, of which your orators are trustees. Said bill further alleged the current and then presently accruing obligations of the said defendant Union Pacific Railway Company, the resources, earnings and financial condition of said company, and that by reason of a prevailing depression in business and extraordinary stringency of money markets, and by reason of other causes in said bill set forth, the earnings of said company had been seriously depleted, and it was charged in said bill that for the year 1893 the business of said company would fail to meet its expenses and charges by the sum of at least three million dollars; and that the said railway company was not then able, and would not thereafter during the year 1893, be able to earn, either upon its own lines of railway or upon its said system, or either or both of them, its operating expenses and fixed charges, and that the said defendant,

The Union Pacific Railway Company, was insolvent and could not meet or pay its indebtedness or liabilities as they fell due or accrued in the usual and ordinary course of business.

Said Ames bill prayed for the appointment by this court of receivers of all of the railroad and property of the Union Pacific Railway Company, and each of the other defendants therein, and the prayer of the said Ames bill (omitting that portion thereof praying for writ of subpœna) was as follows:

"2. That the court will fully administer the trust fund in which your orators are interested, constituting the entire railroad system, lands and assets of the said defendant corporation, The Union Pacific Railway Company, and will for such purpose marshal all its assets and ascertain the several respective liens and priorities existing upon each and every part of all the said system of railway and property, and the amount due upon each and every part of such mortgages or other liens, and enforce and decree the rights,

liens and equities of each and all of the stockholders and bondholders and creditors of the said defendants, and of each of them, as the same may be finally ascertained and decreed by the court upon the respective interventions or applications of each and every of such stockholder, creditor or lienor, in and to not only said lines of railroad, appurtenances, equipments, lands and property, but also to and upon each and every portion of the assets and property of each of the said corporations.

"3. That, for the purpose of enforcing the liens and equities of the holders of the loans and of the floating debt of the said defendant The Union Pacific Railway Company, and of the respective stockholders, bondholders, lienholders and general creditors of each of the said defendants, and of each of the companies embraced in or operated as a part of the said system, as well as to preserve the unity of said system as it has been for years maintained and operated, and preventing the disruption thereof by separate executions, attachments and sequestrations, the occurrence of which will be unavoidable in view of the inevitable defaults in interest and other payments which will soon occur, your orators pray that this court will forthwith appoint one or more receivers of the entire system of railroads held, controlled, leased or operated by, or in the interest, or for the benefit of the said defendant, The Union Pacific Railway Company, and of all the equipments, material, machinery, supplies, moneys, accounts, choses in action, shares of stock, bonds, property and assets of every description, and wheresoever situated, and of all said lands and land grants, leasehold, contractural rights and property belonging to the said defendant, The Union Pacific Railway Company, as well also as all those belonging to each of the
16 defendants herein, and those of each the said several companies controlled, leased or operated by, for or in the interest of said Union Pacific Railway Company, as a part of, or in connection with, said system, with authority to manage and operate the same; and that each of the defendants, and the officers, managers, superintendents, agents and employees of each of the defendants be required forthwith to deliver up the possession of all and singular each and every part of the said property over which the receivers shall be appointed, wherever situate; also all books of accounts, office vouchers and papers in any way relating to the business or operation of said system of railways, and for an injunction restraining perpetually and during the pendency of this suit each of the defendants and every of the officers, directors, managers, superintendents, agents and employees of each of the defendants, and all persons whomsoever, from interfering in any way whatever with the possession and control of the receivers over any part of said property.

"4. And that your orators may have such other and further relief as to the court may seem proper, and as may be necessary to fully enforce the rights and equities of your orators, and of all other creditors and stockholders of the defendant corporations."

Your orators pray leave to refer to said Ames bill or to a duly authenticated copy thereof, when the same shall be produced upon

the final hearing or upon any hearing herein, with the same force and effect as if said bill were herein set out at length.

Your orators further show that upon the filing of said Ames bill The Union Pacific Railway Company, one of the defendants herein, filed its answer thereto and each and every other defendant company in said bill named filed its entry of appearance in said Ames cause; the said Union Pacific Railway Company by its said answer admitting the allegations of said bill and consenting to the appointment of receivers as therein prayed and said other corporations defendants in said bill, each in and by its entry of appearance, likewise consenting to such appointment of receivers.

That thereafter and upon the 13th day of October, 1893, Hon. Elmer S. Dundy, one of the judges of this court, made an order appointing receivers as in said bill prayed, which said order was filed in said cause on said 13th day of October, 1893. A copy of said order appointing receivers is attached hereto as part thereof and marked Exhibit "C."

17 That in and by said order of October 13th, 1893, S. H. H. Clark, of St. Louis, Missouri; Oliver W. Mink, of Boston, Massachusetts, and E. Ellery Anderson, of New York (all of whom are made defendants herein), were appointed receivers of the defendant The Union Pacific Railway Company, and of all the railroads and assets described in said Ames bill, being the system of railroads owned, possessed, held and controlled, leased or operated by, for or in the interest of the said Union Pacific Railway Company, and all the property of said Union Pacific Railway Company, and of each of said other companies, defendants in said Ames bill, real, personal and mixed, of whatever kind and description and wherever situated, whether described in said Ames bill or not, including all equipments, locomotives, cars and other rolling stock, boats, steamships, docks, piers, floats, machinery, tools, material, shops, coal yards and fixtures, coal on hand and supplies then owned, held or in possession of any of said defendants in said Ames bill, and including all track, terminal facilities, real estate, warehouses, offices, stations and other buildings of every kind owned, held or possessed by said companies, together with all telegraph lines and the appurtenances thereto, and also all the moneys, books of account, contracts of every kind, debts, things in action, bonds, stocks, securities, deeds, leases, leasehold interests, beneficial muniments of title, bills receivable, rents, profits and income of the premises accruing and to accrue, as well as all franchises, rights, easements and privileges of each of said companies defendant in said Ames bill.

That said receivers so appointed by this court qualified as such and thereupon took possession of all the lines of railroad, lands and properties of every description embraced in and covered by said order, and have since (together with the additional receivers hereinafter mentioned, from the date of their appointment) continuously held and now hold (with said additional receivers) possession thereof, controlling, using, operating and managing the same as in said order directed and prescribed. That on the 13th day of November, 1893, an order was made in said Ames cause in this court appoint-

ing John W. Doane, of Illinois, and Frederic R. Coudert, of New York city, additional receivers of this court, of all and singular the Union Pacific railway and of all the railroad, property and assets described in the Ames bill of complaint, and more particularly described in the order of this court theretofore entered in said Ames cause, appointing S. H. H. Clark, Oliver W. Mink and E. Ellery Anderson receivers. That it was in said order appointing such
18 additional receivers provided that John W. Doane and Frederic R. Coudert, acting and co-operating with the said receivers, Clark, Mink and Anderson, should have all the powers granted to, and perform all the duties imposed upon, the said receivers, Clark, Mink and Anderson, by the former orders of this court, as fully and to the same effect as if the original order of this court, appointing the said Clark, Mink and Anderson as such receivers, had embraced the names of five receivers instead of three, namely, of the said Doane and Coudert in addition to the said Clark, Mink and Anderson. A copy of the order appointing such additional receivers is attached hereto as part hereof, and marked "Exhibit D." That said additional receivers thereupon qualified as such, and have been and now are acting and in possession as such with said receivers originally appointed as aforesaid.

Like bills were filed by the complainants in said Ames cause in the circuit courts of the United States for the other several districts in which property of said defendants was located, and among other courts, in the United States circuit courts for the southern district of Iowa, for the district of Colorado, and for the district of Wyoming, and in the district court for the third judicial district of the Territory of Utah; and in each and all of said jurisdictions like proceedings were thereupon had and like orders entered appointing the same persons ancillary receivers of all the property of said defendants, in said Ames bill, situated in said several jurisdictions, respectively. Said receivers so appointed duly qualified as such and have been and now are in possession, as such receivers, of all the property of said defendants situated within the territorial jurisdiction of said courts, respectively. To each and all of said bills, proceedings and orders, and especially to the bills, proceedings and orders filed and made in the circuit courts of the United States for the southern district of Iowa, for the district of Colorado, and for the district of Wyoming, and in the district court for the third judicial district of the Territory of Utah, your orators pray leave to refer with the same force as if the same were here set out at length.

Eleventh. Your orators further show that all the lines of railroad and telegraph, lands, and all property of every description embraced in said first mortgage of the Union Pacific Railroad Company, of November 1st, 1865, are, by virtue of said order appointing receivers in said Ames cause (which cause is still pending and undetermined in this court), in the possession, custody and control of this court, and that all of said property so embraced in said mortgage is in process of administration by this court, by reason whereof your orators are and will be unable, save as herein sought,
19 to take possession of the same, and through possession thereof to administer their trust as in said mortgage it was provided

they should do in the event of default in the payment of interest as therein specified, and to have the mortgaged premises sold and duly administered and their said security enforced as in said mortgage contemplated and provided.

Your orators further show that said Union Pacific Railway Company is insolvent and unable to meet its operating expenses and accrued obligations, and it is in default in the payment of interest heretofore matured on its bonded debt and guaranties in an amount aggregating several millions of dollars.

Your orators further show that said Union Pacific system comprises many roads operated as part of said system by virtue of ownership of stock by the said Union Pacific Railway Company, or of leases or of other arrangements, which are unproductive, the earnings whereof have in past years been insufficient, and continue to be insufficient to meet the expenses of operating the same; and upon information and belief your orators aver and charge that the revenues derived from other parts of the said Union Pacific system, and particularly revenues derived from the railroad known as the Union division, and embraced in the said first mortgage to your orators as trustees, and which revenues are an essential element of said mortgage security, have been, and continue to be, by said receivers diverted and used for the purpose of meeting the said deficit in the earnings of said unproductive roads and parts of the system.

Your orators further show that said first mortgage specifically pledges to your orators, as trustees thereof, and for the security of holders of bonds issued thereunder, all of the franchises of the said mortgagor described in said mortgage, including, as your orators are advised and aver, the franchise to levy, charge, collect and receive charges, tolls, income and revenues upon and from and for the use and from the operation of the railroad, telegraph and property embraced in said mortgage, and including the franchise to maintain and operate said railway; and said mortgage further provides that, in the event of default, as in said mortgage specified, in the payment of interest on said bonds, and upon the request of holders of bonds as therein provided, it shall be the duty of said trustees (—) forthwith enter into and take possession of all and singular the said mortgaged property, rights and franchises, and use, operate and manage the same for the benefit of the holders of all said bonds.

Your orators further show that by reason of the insolvency of the defendant The Union Pacific Railway Company, the
20 mortgagor (as successor to said Union Pacific Railroad Company as aforesaid), and by reason of the diversion, by the said receivers in the Ames cause, of the revenues of the estate mortgaged to your orators as aforesaid, and by reason of the fact that said revenues form, as your orators charge and aver, an essential element of the security of your orators and of the holders of said bonds secured by said mortgage, your orators are entitled to have the said revenues forthwith immediately and continuously appropriated to the payment of the interest upon the said bonds secured by said mortgage.

Your orators further state that, as they are informed and believe, the said mortgaged premises, under the conditions aforesaid, and as the same are now situated and circumstanced, are insufficient and inadequate security for the payment of the outstanding bonds secured by said first mortgage of the Union Pacific Railroad Company of November 1st, 1865, of which your orators are successor trustees.

Your orators further show that, by reason of the premises, your orators, as such trustees, are entitled to have their trust with respect to said mortgaged estate duly administered and executed, and to have said mortgaged premises sold; and, to the end that they may have a decree enforcing their security, together with proper intermediate relief, they bring this their bill of complaint.

Twelfth. That the United States of America has or claims to have a lien upon the railroad and property, or some part of the railroad and property, embraced in the said first mortgage of which your orators are trustees, arising out of and created by the acts of Congress of the United States hereinbefore referred to, which, among other things, provide a lien to secure the bonds of the United States, issued in aid of the construction of said railroad, or of parts thereof; or, said United States of America otherwise has or claims to have some interest in or lien upon said railroad and property.

That the defendant The Union Trust Company of New York is a corporation organized under the laws of the State of New York, and is a citizen and resident of said State of New York; that said last-named company has or claims to have some lien upon or interest in the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain mortgage made by the said Union Pacific Railroad Company to the said Union Trust Company of New York as trustee, dated on the 18th day of December, 1873, and known as the "sinking fund indenture" of the said Union
21 Pacific Railroad Company; or, said Union Trust Company otherwise has or claims to have some lien upon or interest in said railroad and property, or upon or in a part thereof.

That the defendant J. Pierpont Morgan is a citizen and resident of the State of New York, and the defendant Edwin F. Atkins is a citizen and resident of the State of Massachusetts, and said defendants Atkins and Morgan have or claim to have some lien upon or interest in or upon some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain mortgage or deed of trust made by the said Union Pacific Railroad Company to John Edgar Thomson of Philadelphia (since deceased), and to said J. Pierpont Morgan and Elisha Atkins, dated on the 1st day of April, 1871, and known as the "Omaha Bridge mortgage," and arising out of an agreement between the Union Pacific Railroad Company and said Thomson, Morgan and Atkins, dated on the 27th day of September, 1871, and known as the "supplemental Omaha Bridge mortgage;" or said Morgan and Atkins otherwise have or claim to have some lien upon or interest in or upon some part of said property.

That the defendant The Central Trust Company of New York is a corporation organized and existing under the laws of the State of New York, and is a citizen and resident of the said State of New York; that said last-named defendant has or claims some lien upon or interest in a part of the property conveyed by said first mortgage of which your orators are trustees, arising out of a certain mortgage made by the defendant The Union Pacific Railway Company to the said Central Trust Company of New York, as trustee, dated on the 1st day of October, 1885, and known as the "Omaha Bridge renewal mortgage;" or said Central Trust Company otherwise has or claims to have some lien upon or interest in a part of the said property.

That the defendant The Central Pacific Railroad Company is a corporation organized and existing under the laws of the State of California, and is a citizen and resident of said State of California; that said defendant has or claims to have some lien upon or right of interest in or upon the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement or lease, dated June 13, 1875, made, as your orators are informed and believe, between the said Central Pacific Railroad Company and the said Union Pacific Railroad Company, and arising out of a further agreement dated on the 10th day of February, 1888, and made by and between the said Union Pacific Railway Company and the said Central
22 Pacific Railroad Company; or, the said Central Pacific Railroad Company otherwise has or claims to have, some such lien, right or interest.

That the defendant The Southern Pacific Company is a corporation organized and existing under the laws of the State of Kentucky, and is a citizen and resident of said State of Kentucky; that said last-named defendant has or claims to have some lien upon or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage, of which your orators are trustees, arising out of some contract, lease or other agreement heretofore made between said Central Pacific Railroad Company and said Southern Pacific Company, of the date and terms of which your orators are not advised, or said Southern Pacific Company otherwise has or claims to have some such lien, right or interest.

That the defendant The St. Joseph & Grand Island Railroad Company is a corporation organized and existing under the laws of the State of Kansas, and is a citizen and resident of said State of Kansas; that said St. Joseph & Grand Island Railroad Company has or claims to have some lien upon, or right, or interest in or upon the property, or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of two certain agreements, one — which was dated on the 1st day of July, 1885, and made and entered into between the said St. Joseph & Grand Island Railroad Company and the defendant The Union Pacific Railway Company, and the other of which was dated on the 1st day of January, 1887, and made and entered into between the Kansas City & Omaha Railroad Company, the said St. Joseph & Grand

Island Railroad Company, and the said Union Pacific Railway Company; or said defendant The St. Joseph & Grand Island Railroad Company otherwise has or claims to have some lien upon or right, or interest in the said property, or some part thereof.

That the defendant The Kansas City & Omaha Railroad Company is a corporation organized and existing under the laws of the State of Nebraska, and is a citizen and resident of said State of Nebraska. That said last-named defendant has, or claims to have, some lien upon, or right, or interest in or upon the property, or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of said agreement dated January 1st, 1887, between the said Kansas City & Omaha Railroad Company, the St. Joseph & Grand Island Railroad Company, and the Union Pacific Railway Company; or the
23 said defendant The Kansas City & Omaha otherwise has or claims to have some such lien, right or interest.

That the defendant The Oregon Railway & Navigation Company is a corporation organized and existing under the laws of the State of Oregon and is a citizen and resident of said State of Oregon. That said last-named defendant has or claims to have some lien upon or right or interest in the property, or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of two certain agreements made and entered into between the said Oregon Railway & Navigation Company, the Oregon Short Line & Utah Northern Railway Company and the Union Pacific Railway Company, dated respectively on the 1st day of January, 1887, and the 7th day of November, 1887; or said Oregon Railway & Navigation Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Oregon Short Line & Utah Northern Railway Company is a consolidated corporation organized and existing under the laws of the States of Wyoming, Idaho, Oregon and Montana, and of the Territory of Utah, and is a citizen and resident of each of said last-mentioned States and of said Territory; that said last-named defendant has or claims to have some lien upon or right or interest in the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement between the said Oregon Short Line & Utah Northern Railway Company and the said Union Pacific Railway Company, dated on the 6th day of December, 1889; or said Oregon Short Line & Utah Northern Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Union Pacific, Lincoln & Colorado Railway Company is a consolidated corporation organized and existing under the laws of the State of Kansas, and is a citizen and resident of said State of Kansas; that said last-mentioned defendant has or claims to have some lien upon or right or interest in the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement between the said Union Pacific, Lincoln & Colorado Rail-

way Company and the said Union Pacific Railway Company, dated on the 1st day of August, 1888; or said Union Pacific, Lincoln & Colorado Railway Company otherwise claims to have some such lien, right or interest.

That the defendant The Chicago & Northwestern Railway Company is a corporation organized and existing under the laws
24 of the State of Wisconsin, and is a citizen and resident of said State of Wisconsin; that said last-named defendant has or claims to have some lien upon or right or interest in the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement between the said Chicago & Northwestern Railway Company and the Union Pacific Railway Company, dated on October 18th, 1889; or said Chicago & Northwestern Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Omaha & Republican Valley Railway Company is a corporation organized and existing under the laws of the State of Nebraska, and is a citizen and resident of said State of Nebraska; that said last-named defendant has or claims to have some lien upon or right or interest in or upon the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of three certain agreements, the first of which was dated on the 18th day of October, 1889, and made and entered into between the said Omaha & Republican Valley Railway Company and the Chicago, St. Paul, Minneapolis & Omaha Railway Company, and to which the Union Pacific Railway Company assented and became a party by agreement of the same date; the second of which was dated on the 14th day of March, 1890, and was made and entered into between the said Omaha & Republican Valley Railway Company, the Kearney & Black Hills Railway (—) and the Union Pacific Railway Company, and the third of which was dated on the 1st day of May, 1890, and was made and entered into by and between the said Union Pacific Railway Company, the said Omaha & Republican Valley Railway Company, the Salina & Southwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Kansas & Nebraska Railway Company; or said defendant, The Omaha & Republican Valley Railway Company, otherwise has or claims to have some such lien, right or interest.

That the defendant The Chicago, St. Paul, Minneapolis & Omaha Railway Company is a corporation organized and existing under the laws of the State of Wisconsin, and is a citizen and resident of said State of Wisconsin. That said last-named defendant has or claims to have some lien or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of said agreement dated October 18, 1889, and made and entered into by and between the Omaha & Republican Valley Railway Com-
25 pany, the said Chicago, St. Paul, Minneapolis & Omaha Railway Company and the Union Pacific Railway Company; or

said Chicago, St. Paul, Minneapolis & Omaha Railway Company otherwise has or claims to have some such lien, right or interest.

The Kearney & Black Hills Railway Company is a corporation organized and existing under the laws of the State of Nebraska, and is a citizen and resident of said State of Nebraska; and said last-named defendant has or claims to have some lien upon, or right or interest in or upon, the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of said agreement and dated on the 14th day of March, 1890, and made and entered into by and between the said Omaha & Republican Valley Railway Company, the said Kearney & Black Hills Railway Company, and the said Union Pacific Railway Company; or said Kearney & Black Hills Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendants Frank H. Peavy, E. C. Michener and Charles T. Peavy, copartners under the firm — and style of F. H. Peavey & Company, are citizens and residents of the State of Minnesota, and each of them is a citizen and resident of said last-named State. That said last-named defendants have or claim to have some lien upon or right or interest in or upon the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement dated on the 15th day of March, 1890, made and entered into by and between the said Union Pacific Railway Company, the said Frank H. Peavy, E. C. Michener and Charles T. Peavy, copartners under the firm name and style of F. H. Peavy & Company; or the said Frank H. Peavy, E. C. Michener and Charles T. Peavy, copartners as aforesaid, otherwise have or claim to have some such lien, right or interest.

That the defendant The Union Pacific, Denver & Gulf Railway Company is a consolidated corporation organized and existing under the laws of the States of Colorado and Wyoming, and is a citizen and resident of each of said last-mentioned States. That said last-named defendant has or claims to have some lien upon or right or interest in or upon the property or some part of the property described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement dated on the 1st day of April, 1890, made and entered into by and between the said Union Pacific, Denver & Gulf Railway Company and the
26 said Union Pacific Railway Company; or said defendant The Union Pacific, Denver & Gulf Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Chicago, Milwaukee & St. Paul Railway Company is a corporation organized and existing under the laws of the State of Wisconsin, and is a citizen and resident of said State of Wisconsin. That said last-named defendant has or claims to have some lien upon or right or interest in the property, or some part of the property, described in or conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement dated on the 30th day of April, 1890, and made and entered into by

and between the said Union Pacific Railway Company and the said Chicago, Milwaukee & St. Paul Railway Company; or the said Chicago, Milwaukee & St. Paul Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Salina & Southwestern Railway Company is a corporation organized and existing under the laws of the State of Kansas, and is a citizen and resident of said State of Kansas. That the said last-named defendant has or claims to have some lien upon or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of a certain agreement dated on the 1st day of May, 1890, and made and entered into by and between the Union Pacific Railway Company, the said Omaha & Republican Valley Railway Company, the said Salina & Southwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, and the Chicago, Kansas & Nebraska Railway Company; or said The Salina & Southwestern Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Chicago, Rock Island & Pacific Railway Company is a corporation organized and existing under the laws of the States of Illinois and Iowa, and is a citizen and resident of said last-mentioned States. That said last-named defendant has or claims to have some lien upon or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of said last-mentioned agreement of May 1st, 1890, to which the said Chicago, Rock Island & Pacific Railway Company was a party as aforesaid; or said defendant The Chicago, Rock Island & Pacific Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Chicago, Kansas & Nebraska Rail-
27 way Company is a corporation organized and existing under the laws of the States of Kansas and Colorado, and is a citizen and resident of each of said last-mentioned States. That said last-named defendant has or claims some lien upon or right of interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage of which your orators are trustees, arising out of said last-mentioned agreement of May 1st, 1890, to which said The Chicago, Kansas & Nebraska Railway Company was a party as aforesaid; or said defendant The Chicago, Kansas & Nebraska Railway Company otherwise has or claims to have some such lien, right or interest.

That the defendant The Missouri Pacific Railway Company is a corporation organized and existing under the laws of the State of Missouri, and is a citizen and resident of said State of Missouri. That said last-named defendant has or claims to have some lien upon or right or interest in or upon the property, or some part of the property, described in and conveyed by said first mortgage, of which your orators are trustees, arising out of a certain agreement between the said The Missouri Pacific Railway Company and the said Union Pacific Railway Company, dated the 2d day of May,

1892; or said defendant The Missouri Pacific Railway Company otherwise claims to have some such lien, right or interest.

But your orators allege and show that all of the liens, interests, rights or mortgages of each and all of the defendants herein, who are hereinbefore in this paragraph designated and referred to as having or claiming liens, interests, rights or mortgages upon, in or affecting the property, or any part of the property, embraced and included in said first mortgage of the said Union Pacific Railroad Company to your orators as trustees are subsequent, junior and inferior to the lien of the said first mortgage to your orators, and are subject to your orators' rights, interests and liens as trustees thereunder and to the rights, interests and liens of the holders of the bonds secured thereby.

That the defendant S. H. H. Clark is a citizen and resident of the State of Missouri; that the defendant Oliver W. Mink is a citizen and a resident of the State of Massachusetts; that the defendants E. Ellery Anderson and Frederic R. Coudert are citizens and residents of the State of New York, and the defendant John W. Doane is a citizen and resident of the State of Illinois. That said last-named individual defendants are the said receivers heretofore appointed by this honorable court in said Ames cause now pending in this court and hereinbefore recited, and as such receivers and by reason of the fact that as such they claim some right to possess, hold and otherwise administer the property embraced in the mortgage
28 to your orators as trustees (which said mortgage is the subject-matter of this bill), they are made parties defendant to this bill of complaint.

Thirteenth. Your orators further allege and show that this is a suit arising under the Constitution and laws of the United States, and especially under and by virtue of the several acts of Congress hereinbefore referred to; and your orators further allege that the matters in controversy herein exceed the sum of $5,000, exclusive of interests and costs.

Wherefore, and forasmuch as your orators are remediless in the premises under and by the strict rules of the common law, and can have relief only in a court of equity, where matters of this nature are properly cognizable and reviewable, they file this their bill of complaint and pray, the premises considered:

1. That the said mortgage or deed of trust of November 1, 1865, hereinbefore mentioned and described, so executed and delivered by said Union Pacific Railway Company to Edwin D. Morgan and Oakes Ames, as trustees, and of which your orators are successor trustees, may be decreed to be a lien upon all the property—real, personal and mixed—rights, franchises, lands, railroads and telegraphs described in said mortgage and then owned or subsequently acquired by said Union Pacific Railroad Company or the defendant The Union Pacific Railway Company, and that the said defendant, The Union Pacific Railway Company, may be decreed to pay unto your orators all moneys now due or to become due and payable under and by virtue of said mortgage, and of the bonds issued thereunder and secured thereby, and under and by virtue of said agreement or

supplemental indenture of March 12, 1868, executed by said Union Pacific Railroad Company to said original trustees of said first mortgage and their successors. And in default thereof that the said defendants above named, and all persons claiming under them, or either of them, may be forever barred and foreclosed of and from all equity of redemption and claim of, in and to the said mortgaged premises, and every part and parcel thereof, and that all and singular the said mortgaged premises with the appurtenances, property and effects, rights, immunities and franchises in said mortgage mentioned, may be sold under a decree of this honorable court, and that out of the money arising out of the sale thereof, after deducting from the proceeds of any such sale just allowances for all disbursements and expenses of the said sale, including attorneys' and counsel fees and the reasonable charges of your orators for services rendered as trustees, and for all expenses incurred by them in the premises, and all payments which may be made for taxes or assessments or otherwise on the said premises, or any part
29 thereof, to apply the said proceeds to the payment of the principal of such of the aforesaid bonds as may be at that time unpaid, whether or not the same shall previously have become due, and of the interest which shall at that time have accrued on said principal and be unpaid. And your orators further pray that an account may be taken of the bonds secured by said first mortgage of November 1st, 1865, of which your orators are trustees, and of the amount due on said bonds for principal and interest, or either; and that the names of the lawful holders thereof may be ascertained.

2. That a receiver or receivers may be appointed according to the usual course and practice of this court, with the usual power of receivers in like cases, of all the property, lands, railroad, telegraph and franchises embraced in and covered by said mortgage, and that said receiver or receivers be empowered, instructed and directed to take possession of the railway, rolling stock, telegraph lines and appurtenances, and all extensions and branches thereof, and of all property embraced in said mortgage, and to operate the same and collect and receive the income and tolls thereof, and to account for the net earnings received therefrom (after deducting the expenses of operating the same, and the amount of taxes, assessments and prior charges upon said railroad and property), and to hold and apply the same for the interest and benefit of said bondholders, secured by said mortgage, in conformity with the provisions thereof and as directed by this court. And that the defendants The Union Pacific Railway Company, and the said receivers S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert be decreed to make such transfers or conveyances to said receiver or receivers appointed as herein prayed, and to the purchasers at any sale or sales of all or any part of said property as may be made in conformity with the provisions of said mortgage, or under the decree of this honorable court, which may be necessary and proper to put

such purchaser or purchasers, or either of them, in possession of property so purchased.

3. Your orators further pray that a writ of injunction be issued out of and under the seal of this honorable court by one of your honors, according to the form of the statute in such case made and provided, directing, commanding, enjoining and restraining the said defendants and each of them from interfering with, transferring, selling or disposing of any of the property mentioned in and covered by said mortgage, or from taking possession of, levying upon or attempting to sell, either by judicial process or otherwise, any portion of the property embraced in or covered by said mortgages, and that your orators may have such other or further relief in the premises as the nature and circumstances of this case may require and to this honorable court shall seem meet.

4. That your honors may grant unto your orators a writ of subpœna, directed to defendants The Union Pacific Railway Company, The United States of America, The Union Trust Company of New York, J. Pierpont Morgan, Edwin F. Atkins, The Central Trust Company of New York, The Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Chicago & Northwestern Railway Company, The Omaha & Republican Valley Railway Company, The Chicago, St. Paul, Minneapolis & Omaha Railway Company, The Kearney & Black Hills Railway Company, Frank H. Peavy, E. C. Michener and Charles T. Peavy, copartners under the firm name and style of F. H. Peavy & Company; The Union Pacific, Denver & Gulf Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, The Salina & Southwestern Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Chicago, Kansas & Nebraska Railway Company, The Missouri Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, thereby commanding each of them, at a certain time and under a certain penalty therein to be named, personally to be and appear before this honorable court, then and there to answer all and singular the matters aforesaid, but not under oath (answer under oath being hereby expressly waived), and to stand to and abide by and perform such order, direction and decree as shall be made herein; and as to your honors shall seem equitable and just.

And as to said parties who are properly defendants to this bill of complaint, and who may be out of the jurisdiction of this court, your orators pray that process may be issued to make them or either of them parties if they should come within such jurisdiction, or that if they should not come within such jurisdiction such proceedings may be had in regard to such defendants by publication or otherwise to conclude them in this behalf as may be authorized by or according to the form of the statute in such case made and provided.

And your orators as in duty bound will ever pray.

F. GORDON DEXTER,
OLIVER AMES, SECOND,
Complainants,
By WINSLOW S. PIERCE,
R. S. HALL,
Counsel and Solicitors for said Complainants.

31 UNITED STATES OF AMERICA, *District of Massachusetts,* } ss:

F. Gordon Dexter and Oliver Ames, Second, being duly sworn, say that they are the complainants in the foregoing bill of complaint; that they have read the said bill of complaint and know the contents thereof; that the same is true of their own knowledge except as to those matters therein stated to be alleged on information and belief, and that as to those matters they believe it to be true.

F. GORDON DEXTER,
OLIVER AMES, SECOND.

Sworn to and subscribed before me this 15th day of January, 1895.

[SEAL.] JAMES G. HARRIS,
Notary Public.

Indorsed: Filed January 21, 1895.

EXHIBIT "A."

First Mortgage, Union Pacific Railroad Company.

[U. S. revenue stamps, $1,600, cancelled.]

This indenture, made this first day of November, 1865, between the Union Pacific Railroad Company, a body corporate, created by and under an act of the Congress of the United States of America, approved July 1, 1862, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military, and other purposes," party of the first part, and Edwin D. Morgan, of the city of New York, and Oakes Ames, of Easton, in the State of Massachusetts, parties of the second part, witnesseth:

Whereas the said party of the first part is authorized by the said act of Congress incorporating the same, and by the several acts of Congress amendatory thereof, namely, the act approved July 2, 1864, being chapter 216, and the act approved March 3, 1865, being chapter 88, to borrow money for the objects and purposes therein mentioned, and to execute a mortgage to secure the payment thereof, as hereinafter contained, which bonds and mortgage by said acts of Congress are made the first lien, and unto it the lien of the Government bonds is subordinate; and whereas, for such objects and purposes, said party of the first part is desirous of borrow-

ing a sum of money which shall be equal to the amount per mile of United States bonds, provided by said acts to be issued to said company, for each and every mile of its said railroad com-
32 pleted and to be hereafter completed, and of securing the payment of its corporate bonds to be issued and negotiated therefor by a mortgage to said parties of the second part, as trustees, as hereinafter provided and set forth; and

Whereas, under and pursuant to lawful authority conferred by said several acts of Congress, all of which are hereby declared to be taken as a part of this instrument, the said party of the first part has determined to make, execute, issue, negotiate, and deliver under its corporate seal its corporate bonds, from time to time, and severally payable to bearer, for the sum of $1,000 each, thirty years after the date thereof, with semi-annual interest at the rate of six per centum per annum from the date thereof, to an amount equal and not exceeding per mile the amount provided to be issued by the Government of the United Stares to aid in the construction of said railroad, each of said bonds to be issued to bear date of the time of its issue and to be in form and be certified and have coupons annexed, as follows:

UNITED STATES OF AMERICA.

First-mortgage Bonds.

The Union Pacific Railroad Company acknowledges itself indebted to the bearer hereof in the sum of one thousand dollars, which sum the said company promises to pay unto the holder hereof, at its office in the city of New York, thirty years after the date hereof, and also interest thereon at the rate of six per centum per annum, payable semi-annually from the date hereof, in lawful money of the United States, until the principal sum be paid, on presentation of the annexed interest coupons at the office of the company in the city of New York.

In testimony whereof the said company has hereunto caused to be affixed its corporate seal and these presents to be executed by its president and treasurer, at the city of New York, this — day of ——, A. D. one thousand eight hundred and ——.

—— ——, *President.*

—— ——, *Treasurer.*

We, the undersigned trustees, do hereby certify that the above bond is issued by virtue of authority granted to the Union Pacific Railroad Company by the acts of Congress of the United States, approved July 2, 1864, ch. 216, and March 3, 1865, ch. 88, and is of similar tenor except as to the date, and of like amount with the other bonds issued and to be issued under the said acts of Congress; that the said company has executed to us a mortgage, dated
33 November 1, 1865, purporting to convey to us the entire railroad and telegraph line of said company, with its equipment and appurtenances, for the benefit of the holders of said bonds, and to secure the payment thereof; that the said mortgage has been

recorded in every county through or in which the said road has been permanently located, and a certified copy thereof filed in the office of the Secretary of the Interior at Washington, and that the same is a first lien upon the line of the said company's road, and that no more such bonds have been certified by us than are authorized by the said acts of Congress.

—— ——,
—— ——,
Trustees.

(*Coupon.*)

The Union Pacific Railroad Company will pay bearer, at its office in the city of New York, thirty dollars, on the — day of ——, being interest due that day on its bond No. —.

—— ——, *Treasurer.*

And whereas, said party of the first part has further determined, under and pursuant to authority so conferred by acts of Congress as aforesaid, to execute and acknowledge, under its corporate seal, and deliver to said parties hereto of the second part, a mortgage conveying, assigning, and transferring to them, in trust, all the corporate, real and personal property, franchises and effects hereinafter specifically described, as security for the payment of the said bonds so to be issued, and the interest to grow due thereon, and that said mortgage should contain all and singular the covenants and conditions hereinafter set forth, and should bear date the first day of November, 1865:

Now, therefore, this indenture witnesseth, that the Union Pacific Railroad Company, party of the first part, under and pursuant to and by virtue of the express authority of the said several acts of Congress as aforesaid, and for and in consideration of the premises, and for the purpose and with the intent of better and more effectually securing the payment of said bonds to be issued as aforesaid, with the interest due and to grow due thereon, and for and in consideration of one dollar lawful money of the United States of America, by the said parties of the second part hereto fully and truly paid to the said party of the first part, the receipt whereof is hereby acknowledged, hath bargained, sold, assigned, transferred, and set over, enfeoffed, conveyed, and confirmed unto the said Edwin D. Morgan and Oakes Ames, the said parties of the second
34 part, as trustees, and in trust, and to the survivor of them, and to their successor or successors, all and singular, the railroad and telegraph of the said party of the first part, heretofore constructed, or hereafter to be constructed, from a point on the western boundary of the State of Iowa, heretofore fixed by the President of the United States, pursuant to the terms and provisions of said acts of Congress, to wit, at the city of Omaha, in the Territory of Nebraska; thence, as provided in said acts of Congress, through the territories of the United States to the western boundary of the late Territory of Nevada, together with all its lands, tenements, hereditaments, rights of way, and easements, acquired or appropriated, or which shall be hereafter acquired or appropriated,

for the purpose of a right of way for a single, double or other track, railroad and telegraph line, and for depots, engine-houses, car-houses, station-houses, warehouses, machine shops, superstructures, erections, and fixtures being necessary for the use of said railroad or telegraph; and all and singular the franchises, now owned, (*pos-*) possessed or acquired, or which shall be hereafter owned, possessed or acquired, by the said party of the first part, for the purpose of building and operating said railroad and telegraph above specified and described, and also all the rails, depots, yards, engine-houses, car-houses, station-houses, warehouses, machine shops, workshops, and fixtures of said party of the first part; and also all goods and chattels now owned, or which shall hereafter be owned or acquired, by said party of the first part, necessary to said railroad and telegraph line, or the running and operating the same.

To have and to hold all and singular the premises, rights, franchises, lands and property, real and personal, hereinbefore and hereby assigned, mortgaged, pledged and conveyed, or intended to be, and every part and parcel thereof, with all the appurtenances unto the same belonging, or in anywise appertaining, unto the said Edwin D. Morgan and Oakes Ames, parties of the second part, and their survivor, successor or successors, and his or their assigns, in trust for the person or persons, firm or firms, bodies politic or corporate, who have heretofore or who shall hereafter at any time become the purchasers, or holders, or owners of any or either of said bonds so to be issued as aforesaid, and subject to the terms, provisions and conditions in said bonds contained, and subject also to the provisions and conditions of said acts of Congress, and also subject to the possession and management of said railroad and telegraph line and property by said party of the first part and its assigns, so long as no default shall be made in the payment of either the interest or principal of the said bonds so to be issued, or any of them, and so long as said party of the first part shall well
35 and truly observe, keep, and perform all and singular, the covenants, agreements, conditions and stipulations in this indenture contained and set forth, and which are to be observed, kept, and performed by and on the part of the said party of the first part.

And the said Union Pacific Railroad Company, the party of the first part, covenants and agrees to and with the said parties of the second part, that it shall and will pay, or cause to be paid, all taxes, charges, rates, levies, and assessments imposed, assessed, or levied, or which may hereafter be imposed, assessed or levied upon the premises, lands, franchises and property hereby mortgaged, conveyed and assigned, or intended so to be; and shall and will, at its own proper cost, charge and expense, do, or cause to be done, all the acts and things necessary or proper to be done or performed, in order to preserve and keep valid and intact the lien or incumbrance upon all and singular the aforesaid lands and premises, property and franchises hereby created; and, further, that the said party of the first part shall and will not, at any time hereafter, or in any way or manner, interfere, or avail itself of any extension laws, appraise-

ment laws, or any other laws of the States or Territories through which the said road shall pass, now in force or hereafter to be enacted and in force in said States or Territories, which would alter, affect or impair, or which are or which may be designed, intended or construed to alter, affect or change the rights and interests of the said parties of the second part, as herein declared, or which shall in any way impede or obstruct the mode or manner of realizing, perfecting or enforcing the rights and interests of any of the owners or holders of said bonds so to be issued as aforesaid, or which shall affect, change or alter the time, place, mode, means or manner of perfecting, enjoying or enforcing any of such rights or interests, as the same are herein declared; and also that the said party of the first part shall and will, at any time or times hereafter, and from time to time, execute, acknowledge and deliver, under its corporate seal, to the said parties of the second part, and the survivor, successor or successors thereof, all such other or further assurances, deeds, mortgages, obligations, transfers, indentures and instruments in writing, and shall and will do and perform all such other or further acts or things as shall or may be necessary or proper, or as their counsel learned in the law shall deem necessary, proper or expedient for the better or more effectually securing upon the above-mortgaged premises the payment of the said bonds so to be issued, and the interest due and to grow due thereon, in manner aforesaid, or for carrying into effect the true intent, design, objects, and purposes of these presents, or making, preserving, continuing and keeping valid and effectual the lien and
36 incumberance created, or intended to be created, by the execution, delivery and recording of this indenture, upon the property real and personal, rolling stock, equipments, franchises and effects hereinbefore particularly described.

This indenture further witnesseth, that the said Union Pacific Railroad Company, the party of the first part, by these presents further covenants and agrees to and with the said parties of the second part hereto, and the survivor or survivors of them, and their and his successor or successors, as trustees, in manner and form following, that is to say—

First. That the said Union Pacific Railroad Company, the party hereto of the first part, shall and will well and truly pay the said sums of money secured in and by said bonds so to be issued, as herein provided, together with the semi-annual interest to become due thereon, at the rate of six per cent. per annum, at the times, in the manner and at the place specified therein respectively.

Second. That no greater amount of bonds shall be issued or put in circulation under the provisions of this deed than the sum or amount authorized to be issued by the act of Congress aforesaid, nor shall any such bonds be issued before the same lawfully may be issuable in pursuance of said acts.

Third. If any default shall be made in the payment of any of said bonds or coupons, at the time and place when the same shall become payable, and such default shall continue for six months thereafter, then the said trustees, on the request in writing of holders

of a majority of such bonds, then in force and so in default, may and shall forthwith enter into and take possession of all and singular the said mortgaged property, rights and franchises, and use, operate and manage the same for the benefit of the holders of all said bonds; and if such default shall continue for the space of one year from the (*the*) time of the happening of such default, then said trustees, upon the request in writing of the holders of a majority of all said bonds then outstanding, may and shall offer for sale, and sell, all and singular, the said mortgaged property, rights, and franchises, or so much thereof as may be necessary, at public auction, first giving notice of such sale by advertisement in one or more newspapers published in the city of New York, for a period of ninety days, and otherwise proceeding according to the statutes in such case made and provided; and as the attorneys of the said party of the first part, for that purpose by these presents duly authorized, constituted, and appointed, may and shall make and deliver, to the purchaser or purchasers on said sale, a good and sufficient deed or deeds of conveyance in the law of the lands and
37 real property so sold, in fee-simple, and of all other property, rights, franchises, and privileges so sold, by such full, perfect, and effectual title and estate as the nature of the things sold shall admit and allow, and all proceeds of said mortgaged property, rights, and franchises, which shall be realized by the management or operation thereof, or the sale thereof, provided for in this third clause, after deducting all necessary and proper costs, expenses, charges, and commissions of said sale, and all the other expenses and disbursements of the said trustees in their proceedings, shall be applied by said trustees to the payment of the moneys then owing for principal and interest upon such of said bonds as shall then remain in force, whether due or to become due, and without preference, and the surplus, if any, shall be paid by them to the said party of the first part, its successors or assigns.

And in case of the said trustees entering and taking possession as aforesaid, then at any time afterwards, but before such sale as aforesaid, upon the payment and satisfaction of all sums then payable on said bonds for interest, and all costs, expenses, and charges incurred or accrued by reason of such entry, possession, and use, and the operating and using of the property by the said trustees, they, the said trustees, shall relinquish and restore the premises to the said party of the first part, to be held subject to these presents in like manner as if such entry had not been made.

And whensoever the said trustees shall be in possession by means of any such entry, they shall have full power to run and operate said railroad, and to do and carry on the business of the corporation, party of the first part, including repairs, for the benefit of the holders of said bonds under the trusts by these presents declared, in such manner as the said trustees shall deem discreet and advisable.

And for all services rendered by the said trustees in performance of any duty whatsoever under and by virtue of these presents, they shall be entitled to receive from the party of the first part, or from

and out of the said property or its proceeds, a fair and proper compensation.

This indenture further witnesseth, that these presents are upon the express condition, that, upon the payment of all the bonds so issued and to be issued in full and the interest due thereon, then these presents, and the estate hereby granted, shall cease and determine; and the said party of the first part, its successors and assigns, shall thereupon be immediately and fully reinvested with said premises, franchises, and property hereby granted in law and in fact, without any entry or other act whatsoever.

38 It is further agreed, that no one of the said trustees, their survivor or successors, shall be answerable for the acts, omission, or defaults of the other, nor for anything short of gross negligence or willful default in the discharge of his duties.

And this indenture further witnesseth, that this trust, and the security hereby intended, extends only to such bonds of the party of the first part as shall be certified by the said trustees, or the survivors of them, and his and their successor or successors, and when all such bonds shall be satisfied and discharged, the trusts herein and hereby created shall cease.

This indenture further witnesseth, and it is hereby expressly agreed, that in case of the death, resignation, incapacity, or removal of any or either of the parties of the second part, then it shall and may be lawful, and the remaining, acting, surviving, or competent trustee, and the party of the first part, are hereby jointly empowered to elect and appoint, by an instrument in writing duly executed by each of such parties, a competent person to fill the vacancy created in manner aforesaid, and that such person so appointed trustee, on his acceptance of such appointment, shall have and possess and be vested with the same rights and powers as trustee as he would have had and possessed or been vested with had he been originally made a party of the second part hereto, and shall perform the same duties in all respects; and until such appointment shall be so made in manner aforesaid, and notwithstanding any vacancy as aforesaid, said remaining, surviving, acting or competent trustee shall have full power and authority to execute each and all the trusts hereby created; and his acts in the premises shall be as legal, valid and effectual in all respects and to all intents and purposes as if the same had been done and performed by both the parties hereto of the second part.

And if for any reason the said surviving trustee and the party of the first part hereto should fail to unite in the appointment of a trustee, as before required, within the space of thirty days after such vacancy occurs, then and in that case it shall be the duty of the secretary of the company to call a meeting of the bondholders, by printed notice published in two of the public newspapers in the city of New York, calling such meeting of the bondholders to be held in said city, not less than thirty days after the first publication of said notice, for the purpose of filling such vacancy.

At the time and place specified in such notice the holders of said bonds, at such meeting, shall proceed to elect a suitable person to

act as such trustee to fill said vacancy; and a majority in
39 interest of said bondholders so attending said meeting, or legally represented thereat, shall be competent to elect a new trustee; and the person so elected shall immediately, on such election and on his acceptance in writing of such trust, become vested with all the estate, trust rights, powers and duties of the trustee in whose place he shall have been elected.

And in case said appointment shall be made in manner aforesaid, or in case of such election as aforesaid, the said party of the first part hereby covenants to make, execute and deliver such other or further instruments, deeds, indentures or assurances as may be necessary to enable the person or persons so appointed or elected to execute the trusts hereby created and declared as fully and perfectly in all respects as he or they could have executed the same if originally made a party or parties of the second part to this indenture.

Notice of the appointment or election of every new trustee shall be given to the Department of the Interior.

It is further agreed that it shall be the duty of the said trustees to certify as aforesaid and deliver immediately to the said party of the first part all such bonds as by the said acts of Congress may lawfully be issued from time to time, as the same shall become issuable, to be held or used by the said party of the first part.

In witness whereof, the said Union Pacific Railroad Company, the party of the first part, has caused these presents to be subscribed by its president and attested by its secretary, and has caused its corporate seal to be hereunto affixed; and the said parties of the second part, for the purpose of signifying their acceptance of the trusts herein and hereby created have hereunto subscribed their names and affixed their seals the day and year first above written.

[L. S.] JOHN A. DIX,
President Union Pacific Railroad Company.

Attest: CH'S TUTTLE,
Secretary Union Pacific Railroad Company.

Subscribed, sealed and delivered
in the presence of—
By E. D. MORGAN. E. D. MORGAN. [L. S.]

Witness-:
CHAS. TRACY.
JOHN I. DAVENPORT.

By OAKES AMES. OAKES AMES. [L. S.]
Witness-:
CHAS. TRACY.
AMASA COBB.

By J. A. DIX AND
C. TUTTLE.

Witness-:
CHAS. TRACY.
CHARLES NETTLETON.

DISTRICT OF COLUMBIA, }
Washington County, } 88 :

I, John F. Callan, a commissioner for the Territory of Nebraska, residing in Washington, in the county of Washington and District of Columbia, do certify that on the 13th day of December, in the year 1865, at Washington, in the District aforesaid, before me personally appeared Charles Tracy, who being by me duly sworn, did depose and say that he resides in the city of New York, in the State of New York; that he was one of the subscribing witnesses to the execution of the foregoing deed; that he knew Edwin D. Morgan and Oakes Ames, the persons described in and who executed the said deed; that he saw said Morgan and the said Ames sign, seal, and deliver the same; and they acknowledged to him that they executed the same; and that he, the said Charles Tracy, thereupon became the subscribing witness to the execution of the said deed, which is to me satisfactory evidence of the due execution of said deed.

In witness whereof, I have hereunto set my hand and official seal, at Washington, in the county of Washington, in the [L. S.] District of Columbia, this 13th day of December, in the year 1865.

[U. S. revenue stamp, 5 cents, cancelled.]

JOHN F. CALLAN,
A Commissioner for Nebraska.

STATE OF NEW YORK, }
City and County of New York, } 88 :

Be it remembered, that on this fifteenth day of December, A. D. one thousand eight hundred and sixty-five, before me, Charles Nettleton, a commissioner of the Territory of Nebraska, in and for the State of New York, duly appointed and commissioned by the governor of said Territory, duly sworn and dwelling in said city of New York, personally appeared John A. Dix, the president of the Union Pacific Railroad Company, and Charles Tuttle, the secretary of the same company, to me respectively known, who being by me severally duly sworn, did depose and say that he, the said John A. Dix, resided in the city, county and State of New York, and that he, said Charles Tuttle, resided in Rye, in the county of Westchester, in the State of New York; that he, said John A. Dix, was the president, and he said Charles Tuttle, was the secretary, of said Union Pacific Railroad Company; that they each knew the corporate seal of the said company; that the seal affixed to the foregoing indenture was such corporate seal; that the said corporate seal was so affixed by the order of the board of directors of said company, and with the assent and authority of the stockholders thereof;
41 and that the said John A. Dix, as such president as aforesaid, subscribed the said indenture; and the said Charles Tuttle, as such secretary as aforesaid, attested the same by subscribing his name thereto, by the like order and authority; and they the said John A. Dix and Charles Tuttle, acknowledged to me that they

executed the same indenture in manner aforesaid, as the act and deed of the said Union Pacific Railroad Company.

[L. S.] In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year above written.

CHARLES NETTLETON,
Commissioner for the Territory of Nebraska in New York.

[U. S. revenue stamp, 5 cents, cancelled.]

Similar certificates follow for the Territories of Dakota, Colorado, Utah, and State of Nevada.

EXHIBIT "B."

Agreement.

Union Pacific Railroad Company with Edwin D. Morgan and Oakes Ames, trustees. } Dated March 12, 1868.

Providing for the payment of the principal of the first-mortgage bonds in gold coin at maturity.

Know all men by these presents, that whereas the Union Pacific Railroad Company heretofore executed to Edwin D. Morgan and Oakes Ames, trustees, a certain indenture of mortgage bearing date the first day of November, one thousand eight hundred and sixty-five, mortgaging thereby the railroad of the said company to the said trustees to secure the payment of the said company's first-mortgage bonds, and the said indenture of mortgage was duly recorded; and

Whereas, the said company has issued divers of the said first-mortgage bonds and intends hereafter to issue divers other of said first-mortgage bonds, mentioned in and provided for by the said indenture of mortgage; and

Whereas, by the tenor of the said bonds the principal sums payable thereon at maturity is to be paid in lawful money of the United States.

Now in consideration of the premises, and of one dollar to the said company in hand paid, the receipt whereof is hereby
42 acknowledged, and for divers other good and valuable considerations the said company thereunto moving, the said company hereby covenants and agrees to and with the said Edwin D. Morgan and Oakes Ames, as trustees for the benefit of all who are or shall be holders of said bonds, and to and with the successors of said trustees in the trust created by the said indenture of mortgage; that the principal of all the said first-mortgage bonds being one thousand dollars each as well such as have been issued hitherto as such as shall be issued hereafter, shall and will be paid by the said company, whensoever the same respectively become payable, according to the tenor thereof, in the gold coin of the United States at par, that is to say, one thousand dollars of such coin for each of the said bonds.

In witness whereof the said company has caused these presents to be sealed with its corporate seal and to be subscribed by its president and treasurer this twelfth day of March, one thousand eight hundred and sixty-eight.

[SEAL.] (Signed) OLIVER AMES, *President.*
(Signed) JOHN J. CISCO, *Treasurer.*

Sealed and delivered in the presence of—
(Signed) BENJAMIN F. HAM.

EXHIBIT "C."

Order Appointing Receivers.

(Title and caption omitted.)

Upon reading and considering the verified bill of complaint in this cause and the answer of the defendant The Union Pacific Railway Company this day filed, and on motion of counsel for the complainants the defendant The Union Pacific Railway Company appearing by counsel and assenting thereto, and each of the other defendants appearing by counsel and assenting hereto,

And due deliberation being therein had, it is—

Adjudged, ordered and decreed by the court that S. H. H. Clark, of St. Louis, and Oliver W. Mink of Boston, and E. Ellery Anderson of New York, be and they are hereby appointed receivers of this court of all and singular the said defendant The Union Pacific Railway Company and of all the railroads and assets described in the bill of complaint herein, the same being the system of railways now in the possession of and owned, operated, leased or controlled by, for, or in the interest of the said corporation, the Union
43 Pacific Railway Company, situated in the States of Nebraska, Iowa, Kansas, Colorado, Missouri, Wyoming, Montana, Idaho, Washington, Nevada, Oregon, New York, Massachusetts, and the Territories of Utah and New Mexico, and all the property of said Union Pacific Railway Company, and of each of said companies, real, personal, and mixed, of whatever kind and description and wherever situated, whether described in the bill of complaint or not, including all equipments, locomotives, cars and other rolling stock, boats, steamships, ships, docks, piers, floats, machinery, tools, material, shops, coal yards and fixtures, coal on hand and supplies now owned, held or in possession and use for such corporations and wherever situated, and including all track, terminal facilities, real estate, warehouses, offices, stations and all other buildings of every kind owned, held or possessed by said companies together with all telegraph lines and the appurtenances thereto; and also all the moneys, books of account, contracts of every kind, debts, things in action, bonds, stocks, securities, deeds, leases, leasehold interests, beneficial muniments of title, bills receivable, rents, profits and income of the premises accruing and to accrue, as well as all franchises, rights, easements and privileges of said Union Pacific Railway Company, and of each of said companies.

That the said receivers be, and they are hereby, fully authorized and directed to take immediate possession of all and singular the railroads and property above described or referred to, wherever situated or found, and continue the operation of said railroad and water system and every part thereof, and to run, manage and operate the said railroads and such other railroads as said Union Pacific Railway Company holds, controls or operates under lease, contract or otherwise, and has heretofore run and operated, or which have been or are being operated by, for or in the interest of the Union Pacific Railway Company as part of its system, and to exercise the authority and franchises of the said company and conduct systematically the business and occupation of a common carrier of passengers and freight, and discharge all of the public and governmental duties obligatory upon said railway corporation or upon any of the other corporations whose lines of road are now in the possession of and operated by, for or in the interest of said Union Pacific Railway Company; and to preserve the said property in proper condition and repair, so that it may with safety and most advantageously be used, and to protect the title and possession of the same, and to employ such persons and make such payments and disbursements as may be needful or proper in so doing.

Each and every of the officers, directors, agents or employees
44 of the said Union Pacific Railway Company and of each of the defendants, and all other persons and corporations soever, as well as each of the defendants, are hereby required and commanded forthwith to turn over and deliver to such receivers, or their duly constituted representatives, any and all railroads, property, books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys, or other property in his or their hands, or under his or their control; and each and every of such directors, officers, agents, persons or corporations are hereby commanded and required to obey and conform to such orders as may be given them, from time to time, by the said receivers, or their duly constituted representatives, in conducting the operations of said property and in discharging their duties as such receivers; and each and every of such officers, directors, and employees of the said Union Pacific Railway Company, and of each of the defendants, and all other persons and corporations soever, are hereby enjoined from interfering in any way whatever with the possession or management of any part of the property over which the receivers are hereby appointed, or interfering in any way to prevent the discharge of their duties or operating the same under the court's order.

Said receivers are hereby fully authorized to operate the said system of railroads so owned, leased, operated or controlled by or for or in the interest of the said Union Pacific Railway Company, and manage all other property of such corporation at their discretion and in such manner as will in their judgment produce the most satisfactory results consistent with the discharge of the public duties imposed thereon, and to collect and receive all the income therefrom and all the debts due said companies of all kinds; and for such purpose are hereby vested with full power at their discretion

to employ and discharge, and fix the compensation of all such officers, attorneys, managers, superintendents, agents, and employees, to aid in the proper discharge of their duties; and they and each of them shall have power, with the sanction of the court, to redeem any and all of the securities of the company now pledged as security on loans of money, and they shall have power with the saction of the court first had to borrow money, if needful in their judgment in order to comply with this direction, and also so far as may be needful to pay all operating expenses and for current necessities for labor and supplies, but for no other purpose without the further order of this court.

Said receivers are fully authorized and empowered to institute and prosecute all such suits as may be necessary in their judgment for the proper protection of the property and trusts hereby
45 vested in them; and to likewise defend such actions instituted against them as such receivers, and also to appear in and conduct the prosecution or defense of any suit now pending in any court against The Union Pacific Railway Company, the defendants or any of them, or any of the companies embraced in the Union Pacific system or operated by, for or in the interest of said system, the prosecution or defense of which will, in the judgment of said receivers, be necessary for the proper protection of the property placed in their charge for the interests and rights of creditors connected therewith.

Said receivers are hereby directed to deposit the moneys coming into their hands in some banks in New York city, Boston and Omaha, and such other cities or places as may be necessary or convenient, and report to the court what banks they have so selected.

It is hereby further ordered, adjudged and decreed that out of the moneys that shall come into the hands of said receivers from the operation of said railway properties or otherwise they shall:

1st. Pay all current expenses incident to the creation or administration of this trust and to the operation of said railway or railroads and properties.

2d. Pay all sums due or to become due connecting or intersecting lines of railroads arising from the interchange of business, and for track service of other railroads used by said Union Pacific Railway Company or system in the operation of its lines, traffic and car mileage, balances and all amounts now due from said Union Pacific Railway Company or roads and properties constituting part of its system for taxes and assessments upon the property or any part thereof.

3d. Pay the amounts due to all operatives, employees, attorneys and agents of said company for any service rendered said company or companies within six months prior to the allowance of this order.

4th. Pay all amounts due for supplies and material contracted for or purchased or delivered or used in operating said railway or railroads, or by said company or companies for supplies furnished to laborers and credited against their labor within six months prior to the allowance of this order.

5th. And all amounts due from said railway company or companies for or on account of the rental or compensation for railway lines, property or rolling stock.

6th. The money belonging to the defendants and each
46 company constituting part of the said system, except as heretofore directed, shall be held by said receivers until they are authorized to dispose of the same under the order or decree of this court.

7th. And said receivers are further authorized, in case it is proper in their judgment, with the sanction of the court, to use any balance of funds arising from the operating of said railroads, for the purpose of protecting such of the real and personal property as aforesaid under lease, sale, pledge, mortgage or contract.

It is further ordered that the said receivers shall retain possession and continue to discharge the duties and trusts aforesaid until the further order of this court in the premises, and that they shall, from time to time, make report to this court of their doings in the premises, and may, from time to time, apply to this court for such other and further order and direction as they may deem necessary and requisite to the due administration of said trust; and said receivers are vested, in addition to the powers aforesaid, with all the general powers of receivers in cases of this kind, subject to the supervision of this court.

It is further ordered that an injunction be issued against the defendants, and all other persons claiming to act by, through or under them, and all other persons, to restrain them from interfering with the receivers further taking possession of and managing said property.

Said receivers are hereby further required, within twenty days from this date, to file with the clerk of this court a proper bond, with sureties to be approved by the clerk of this court or a judge thereof, each in the penal sum of fifty thousand dollars, conditioned for the faithful discharge of their duties, and to account for all funds coming into their hands, according to the order of this court.

ELMER S. DUNDY, *Judge.*

October 13, 1893.

EXHIBIT "D."

Order Appointing Receivers.

(Title omitted.)

Upon reading and considering the verified bill of complaint in this cause, and the answer of the defendant The Union Pacific Railway Company, and upon further reading and considering the petition of Richard Olney, Attorney General of the United States, for the United States, this day presented, and upon motion of George
Hoadly, special assistant to the Attorney General in the
47 premises, the complainants and defendants appearing by counsel and assenting hereto, and due deliberation being therein had, it is—

Ordered, adjudged and decreed by the court that John W. Doane, of Chicago, Illinois, and Frederic R. Coudert, of New York city, be, and they are hereby appointed additional receivers of this court, of all and singular the said defendant The Union Pacific Railway Company, and of all the railroad property and assets described in the bill of complaint herein, and more particularly described in the order of this court heretofore entered in this cause, appointing S. H. H. Clark, Oliver W. Mink and E. Ellery Anderson, receivers, reference thereto being hereby had and made, and the said additional receivers hereby appointed are required within thirty days from this date to file with the clerk of this court a proper bond, with sureties to be approved by the said clerk or the court, each in the penal sum of fifty thousand dollars, conditioned for the faithful discharge of his duties and to account for all funds coming into his hands according to the order of this court; and it is further—

Ordered, adjudged and decreed, that all provisions of all former orders of this court herein shall apply, so as to authorize and govern the said additional receivers, viz: John W. Doane and Frederic R. Coudert, hereby appointed, so that said additional receivers, viz: John W. Doane and Frederic R. Coudert, acting and co-operating with said receivers Clark, Mink and Anderson, shall have all the powers granted to and perform all the duties imposed upon the said receivers, Clark, Mink and Anderson by the former orders of this court, as fully and to the same effect as if the original orders of this court appointing the said Clark, Mink and Anderson as such receivers, had embraced the names of five receivers instead of three, namely, of the said Doane and Coudert, in addition to the said Clark, Mink and Anderson.

Moneys to be realized in operating roads described in bill over the above amounts necessary to pay operating expenses and repairs and purchasing necessary material, etc., as well as for the payment of new machinery, etc., to be held and retained by the receivers until otherwise ordered by the court. This order not to interfere with orders directing payment of other claims now made.

ELMER S. DUNDY, *Judge.*

Indorsed: Filed Jan. 21, 1895. Elmer D. Frank, clerk.

Thereupon, afterwards, to wit, on the 24th day of June, 1895, separate answer of the Union Pacific Railway Company was
48 filed in said case, which said separate answer is in the words and figures following, to wit:

In the Circuit Courts of the United States for the Districts of Nebraska, Iowa, Colorado, and Wyoming and in the Third District Court of Utah Territory.

(Title of cause omitted.)

Separate Answer of the Union Pacific Railway Company to the Bill of Complaint Herein.

This defendant saving and reserving to itself all manner of benefit or advantage of exception or otherwise that may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for it to make answer unto, answering saith as follows:

1. This defendant admits that the complainants herein have in their said bill truly and correctly stated the citizenship and residence of the several parties to said bill, both complainants and defendants, and have also truly stated therein the manner in which and the time when this defendant was incorporated and the authority of law under which this defendant was created, and that they have therein also truly described the lines of railroad owned, constructed and operated by this defendant, and also that said receivers of said defendant, The Union Pacific Railway Company, as mentioned and described in the said bill of complaint are correctly named therein, and the dates of their appointment, the suit in which they were appointed and their several places of residence are also therein correctly stated and alleged.

And further, this defendant admits all and singular the several allegations in the first paragraph of complainants' said bill mentioned, except it states as follows:

That while said The Union Pacific Railway Company has and maintains a general office and place of business in the city of Omaha, State and district of Nebraska, it is also true, that as required by the law of its organization, the Union Pacific Railway Company has and maintains its principal office and place of business at Boston, in the State of Massachusetts. And this defendant prays that it may have leave to refer to each and every act of Congress in said first paragraph of said bill mentioned with the same force and effect as if the said acts of Congress were herein set out at length; and that it may hereafter refer to any of the several acts of legis-

49 lation of either the Territories of Kansas or Colorado, or to the acts of legislation of the States of Colorado or Kansas which it may be advised are or may become material to it of and in respect to any of the matters alleged against this defendant in said bill of complaint.

2. For answer to the second paragraph of complainants' said bill this defendant admits each and every allegation contained in said second paragraph; but it also prays leave that it may from time to time refer to the said acts of Congress in said paragraph mentioned with the same force and effect as if each and every part or section thereof were herein specially pleaded, and that it may also from

time to time, as it may be advised, by proper allegations and by way of amendment to this, its answer, allege of and concerning any of said matters or things material or necessary for it to plead or answer for a full and complete statements of the rights, duties and obligations of the parties hereto and as may be necessary to make a full and complete showing of the rights, privileges and obligations of the complainants herein and of the mortgage indebtedness which they, under the terms of the said instrument represent.

This defendant specially submits to the court all and singular each of the several sections of the respective acts of Congress under and by virtue of which, as complainants allege, this defendant's predecessor, the Union Pacific Railroad Company, was authorized to make contracts, to borrow money and to make, execute and deliver mortgages, and also all of those acts under and by virtue of which the aid granted to the said Union Pacific Railroad Company was furnished by the United States of America, so that each and every of the terms and conditions of the said several acts of Congress may be inspected by the court and its determination had as to each and every of the matters in complainants' bill alleged, by virtue of which any right or claim of the Government of the United States as against the property of this defendant is supposed to exist; all of which several acts of Congress aforesaid this defendant submits to the court as a part of the controversy herein.

3. For answer to the third paragraph of complainants' bill this defendant admits that, pursuant to the provisions of the congressional legislation in complainants' bill alleged, the President of the United States, by executive orders, dated November 17, 1863, and March 7, 1864 (copies of which executive orders this defendant prays leave to hereafter present and submit as a part of this its answer), duly fixed the eastern terminus of the Union Pacific
50 railroad on or near the Iowa bank of the Missouri river, the point of location so fixed by said executive orders this defendant prays may be determined by the terms of such executive orders hereinbefore referred to.

And further this defendant saith that it is true as alleged that prior to the consolidation of the said Union Pacific Railroad Company with the other companies forming this defendant, said Union Pacific Railroad Company constructed and completed its line of railroad and telegraph with the appurtenances thereto belonging from Council Bluffs, in the State of Iowa, westerly through the States (then Territories) of Nebraska, Colorado and Wyoming, and into the Territory of Wyoming forming a connection with the railroad of the Central Pacific Railroad Company at a point about seven miles (not five) west of Ogden, in said Territory of Utah, a distance of 1,042.93 miles; but this defendant says that it is not true that said line as opened and operated included the bridge over the Missouri river between Council Bluffs, in the State of Iowa, and Omaha, in the State of Nebraska, which said bridge, this defendant alleges, was constructed and first operated about the year 1871 or 1872, long after the completion and construction of the remainder of the said railroad from Council Bluffs to Ogden, as aforesaid—pending the

construction of which said bridge the crossing of the said Missouri river and connections with railroads east thereof, was made by ferry-boats and other facilities then in use.

It admits that all of its line of railroad and telegraph and the bridge aforesaid were constructed under and by virtue of, in the time and manner and upon the conditions prescribed by the several acts of Congress of the United States passed of and in respect to the several matters of construction as therein alleged; and it submits all of the said facts in respect to the construction of the said railroad, telegraph, bridge and appurtenances to the court as well as the laws of Congress passed in respect to the said Union Pacific Railroad Company and prescribing its rights, powers and duties, as well as those acts conferring upon it the privileges in respect to the construction of the said bridge for the determination of this court as to whether or not each and every part or what part, of said line of railroad, telegraph, bridge and appurtenances are subject to, embraced and included in the said first mortgage of the Union Pacific Railroad Company of November 1st, 1865, of which, in fact, the complainants are trustees as in said bill alleged—this defendant not admitting or denying the allegations in respect thereto as alleged by complainants in their said bill.

4. For answer to the fourth paragraph of complainants' bill this defendant admits that the bonds issued by said Union Pacific
51 Railroad Company are therein as to their date and tenor correctly described, so that a true copy of the said bonds (the serial numbers thereof alone excepted) is shown in the first mortgage in said paragraph mentioned, and that a true copy thereof is set out in and as a part of said Exhibit "A" attached to the complainants' bill, but this defendant leaves the complainants to their proofs as to the corporate action of the said Union Pacific Railroad Company alleged by complainants to have been made of and in respect to the determination of said company to issue said bonds.

It admits further that said Union Pacific Railroad Company did make, execute, issue at the time and in the manner in said fourth paragraph alleged 27,229 of its said mortgage bonds to the gross aggregate amount of $27,229,000, all of which bonds are correctly described in the said fourth paragraph.

5. For answer to the fifth paragraph of complainants' bill this defendant admits that said Union Pacific Railroad Company did on or about the first day of November, 1865, make and execute under its corporate seal the said first mortgage in said fifth paragraph mentioned and described and delivered the same to the said Edwin D. Morgan and Oakes Ames as trustees, and that in and by the terms of said mortgage the said Union Pacific Railroad Company did bargain, sell, assign, transfer and set over, enfeoff, convey and confirm unto the said trustees as such and in trust for the uses and purposes in said mortgage mentioned and described, and to the survivor of them, and to their successor or successors, all and singular the said properties, rights, privileges and franchises of said company fully and particularly described in said instrument itself—a true copy whereof this defendant admits is attached to the com-

plainants' said bill, marked Exhibit "A" and is made a part thereof. And this defendant expressly refers to the said instrument itself for a true and correct description of all the property therein and thereby conveyed or sought to be conveyed to the said trustees, referring not only to that portion of said mortgage as to said matter quoted and referred to in the said fifth paragraph of complainants' bill, but this defendant submits the whole of the said mortgage and all its terms and conditions of and in respect to said matter for its statement of that which was conveyed or charged by said instrument.

6. For answer to the sixth paragraph of complainants' bill this defendant hath not sufficient knowledge or information thereof to expressly admit or deny the allegations of the said bill of and in respect to the said agreement or indenture supplemental to
52 said first mortgage, and therefore, of and in respect thereto, this defendant leaves the complainants to their proofs, submitting to the court, however, to determine from said instrument itself, as well also as from the congressional legislation in complainants' bill referred to and to the several other acts of the Congress of the United States of and in respect to this defendant and its predecessors to determine whether or not it was within the corporate competency and power of the said Union Pacific Railroad Company at that or at any other time since then to have made, executed, acknowledged and delivered said agreement or indenture supplemental mentioned and described in said sixth paragraph of complainants' bill or any other agreement wherein or whereby the said Union Pacific Railroad Company or its successors bound or charged itself or its successors with the payment of the said sum of money mentioned in said bonds in any other money than the lawful money of the United States. Whereby, and it submits to the court for its determination under such legislation, whether or not the said matters so stamped or caused to be stamped upon said bonds or any of them was sufficient to charge this defendant with the payment of the said sum of money in said bonds mentioned and described in any other than the lawful money of the United States.

This defendant admits that Exhibit "B" thereto attached is a true copy of the said agreement or supplemental indenture in said sixth paragraph mentioned.

7. For answer to the seventh paragraph of complainants' bill this defendant admits each and every allegation therein contained in manner and form as therein alleged.

8. For answer to the eighth paragraph of complainants' bill this defendant states, upon information and belief, that it is true there were issued and remain yet outstanding the number of 27,229 of said first-mortgage bonds and that all of the same yet remain outstanding; that all of any said bonds were duly certified by the trustees, and further, that said bonds so issued and outstanding bear date and mature respectively at the dates and at the times in said eighth paragraph of complainants' bill mentioned and described.

9. For answer to the ninth paragraph of complainants' bill this defendant admits that it made default in the payment of all of the

interest and of the coupons representing such interest which became due on said first-mortgage bonds on the first day of July, 1894, and this defendant states that it is informed and believes it is
53 true that payment of said interest and coupons or some of them or some portion thereof was duly demanded by the holders of said bonds and coupons, and that the default continued in whole thereon until about the 27th day of November, 1894, when it is true that the receivers hereinafter mentioned offered to pay said defaulted interest at the face of the coupons representing the same (but not including interest alleged to have accrued upon said coupons after the date of their maturity), according to the terms thereof, and at the date of the offer to pay the same so made by said receivers. It admits that a portion of said defaulted interest and of said coupons (the amount of which this defendant is not able at the present time to state), has been paid by the receivers at the face of said coupons, but that no portion of interest accrued upon said defaulted coupons—if any has so accrued—has been paid or has been tendered by said receivers or by said The Union Pacific Railway Company, or by any person or persons on behalf of either of them or otherwise, but all of the interest—if any does accrue or is properly chargeable upon said defaulted coupons—remains due and unpaid.

This defendant, further answering, admits that at the time of the filing of complainants' bill no part of the interest or coupons representing interest which became due on each and all of the said outstanding first mortgage bonds on the first day of January, 1895, was paid by the Union Pacific Railway Company, nor yet by its receivers, the defendants herein, or by any other person for or on its behalf, but that default was wholly made thereon, and that the same and every part thereof still remains due and unpaid and in default.

And it further admits that payment of the said interest and coupons or some of them was as it is informed and believes duly made and demanded.

10. For answer to the tenth paragraph of complainants' bill this defendant admits each and every allegation therein contained in manner and form as therein written.

11. For answer further to said tenth paragraph this defendant admits that all and singular the properties of the said Union Pacific Railway Company embraced in the said first mortgage of complainants, as well as a large amount of other property of said The Union Pacific Railway Company, did pass into the hands of the receivers in said Ames cause in said tenth paragraph mentioned and that the same at the time of filing of complainants' bill remained so in the possession of the said receivers and that it was impossible for complainants to take possession of said properties except by and through this proceeding.

54 This defendant admits that the Union Pacific Railway Company at the time of the filing of complainants' bill was insolvent and unable to meet its operating expenses and its accrued obligations. That it still is in default of the payment of the inter-

est heretofore matured on its bonded debt and other obligations of the said defendant. It admits that there was operated a certain system of railroads in connection with the lines of this defendant known as the Union Pacific system, which system was operated under various rights, powers and authorities, but this defendant leaves complainants to their proofs as to whether or not the said system as a whole or in its several parts was unproductive of revenues in respect to said operations; and this defendant denies that the revenues derived from other parts of its railroad known as the Union division and embraced in said first mortgage of complainants, have been or continue to be diverted and used for the purpose of meeting deficits in the earnings of unproductive roads or parts of said system without right, or that any of such earnings have been at any time diverted or used for any other than proper corporate purposes or proper corporate indebtedness of said The Union Pacific Railway Company, or that in any other way or manner the revenues of the said Union division, or yet of this defendant, were used or pledged for any other than the proper corporate obligations of this defendant. This defendant submits all and singular each and every part and clause of the said first mortgage to the court for its determination as to the rights and privileges, securities or charges made as against said property for the benefit of the trustees of the said mortgage bonds or those whom they represent, and leaves to the court upon consideration of the terms of said instrument the determination of such rights and the construction of the securities given to or conferred upon the said trustees and their *cestui que trust.*

12. This defendant admits that the United States of America claims to have a lien upon the railroad and property, or upon some part of the railroad and property embraced in and covered by the mortgage of the trustees, but this defendant is unable to define the extent of the said alleged lien of the United States, and it alleges that whatever interest the United States may have or claims to have of and in respect to the said properties can only be determined by a hearing wherein its claim may be audited, and examined and wherein and whereby this defendant may, under the rules and practice of this court, show as against the same such sums in reduction thereof or satisfaction of the same as under the facts it may be entitled to. It prays that at any proper stage of this proceeding when any claim or claims of the United States
55 may be asserted it may have leave by proper amendment and by proper allegations to show and allege the truth of and in respect to each and every allegation made by the United States as against the property of said The Union Pacific Railway Company or The Union Pacific Railroad Company, and that it may show and allege in its behalf any advances against the said claim of the United States, either in whole or in part, so that it may show and allege of and in respect to said claim any matter in reduction thereof, either by way of payments made or losses incurred by said The Union Pacific Railway Company by and through any act done or omitted to be done by the United States of America of or in respect to the Union Pacific Railroad Company or the Union Pacific

Railway Company of or in respect to any claim for damages existing or which may exist in favor of said The Union Pacific Railway Company or The Union Pacific Railroad Company against the United States of America growing out of or existing under and by virtue of the said legislation or through legislation of the Congress of the United States, so that upon a proper hearing the true amount of the debt or claim of the United States may be ascertained and found, and further, that upon such hearing the lien of the United States—if any—upon any of the property owned by the Union Pacific Railway Company may be found and determined and defined.

Wherefore, and in respect to the said twelfth paragraph, this defendant prays, under proper leave of court, to further amend its answer herein as from time to time it may be advised it is material or necessary for it to make answer or proper showing.

This defendant further prays that it may also from time to time in this proceeding, as may be fit, necessary or proper, have further leave to answer any claim made or set up by any of the defendants named in the twelfth paragraph of complainants' bill, wherein or whereby any of the other of said defendants may seek to establish a charge or lien against any of the property of this defendant in this proceeding, and that it may have leave by proper allegations of amendment or otherwise to make any other showing of and in respect to the claim of any of its codefendants herein which may be necessary to the ascertainment and settlement of the amount in controversy herein between this defendant and any of its codefendants or of the complainants herein, and also to settle, determine and define the nature and extent of the lien which such defendants or parties hereto might have the right to urge or which they might seek to urge and establish herein, and that such leave to amend and to make such proper allegations this defendant submits
56 and relies upon as fit and necessary to a proper presentation of any cause which might hereafter by pleadings herein be made against it.

13. For answer to the thirteenth paragraph of complainants' bill this defendant admits all and singular the allegations therein contained in manner and form as therein alleged.

All of which this defendant stands ready upon the hearing of this cause and in accordance with the rules, practice and procedure of this honorable court to maintain and prove, without this, that if there is any other matter, cause or thing in the said bill of complaint contained, material or necessary for this defendant to make answer to and not herein well and sufficiently answered, confessed or denied, is true, to the knowledge or belief of this defendant, all of which matters and things this defendant is ready and willing to aver, maintain and prove, as this honorable court shall direct, it prays to be hence dismissed in this behalf accordingly.

THE UNION PACIFIC RAILWAY COMPANY,
By W. J. CARROLL, *Its Solicitor.*

I hereby consent to the filing of the within answer out of time.

WINSLOW S. PIERCE,
Solicitor for Complainants.

Indorsed: Filed June 24, 1895. Elmer D. Frank, clerk.

Thereupon afterwards, to wit, upon said 24th day of June, 1895, separate answer of S. H. H. Clark *et al.*, receivers of the Union Pacific Railway Company, was filed in said case, which said separate answer is in the words and figures following, to wit:

In the Circuit Courts of the United States for the Eighth Judicial Circuit and Districts of Nebraska, Iowa, Colorado, and Wyoming, and in the Third District Court of Utah Territory.

(Title of cause omitted.)

The Separate Answer of S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers of the Union Pacific Railway Company.

These defendants, saving and reserving to themselves all manner of benefit or advantage of exception or otherwise that may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereto or to so much thereof as
57 these defendants are advised it is material or necessary to make answer unto, answering saith as follows:

1. They admit that the complainants have in their said bill in the several paragraphs thereof correctly stated and alleged the citizenship and residence of the parties to their said bill, and the organization, existence and authority for the corporate existence of the defendant The Union Pacific Railway Company, and that they have in their said bill correctly mentioned and described the time when, the manner in which and the causes in which these defendants became the possessors of the railroad and railroad property mentioned and described in complainants' bill, and particularly the railroad of the Union Pacific Railroad Company proper now known as the Union division of the Union Pacific Railway Company's railroad.

2. For answer to the tenth paragraph of complainants' bill these defendants admit each and every allegation thereof in manner and form as therein written.

3. For answer to so much of the eleventh paragraph of complainants' bill as they are advised it is material for them to answer, they deny that any part of the revenues derived from the railroad known as the Union division of the Union Pacific Railway Company or which is that property embraced in the mortgage to complainants as trustees, have been by them or that they continue to be diverted and used for the purpose of meeting any deficits in the earnings of unproductive roads in the Union Pacific system or parts of railroads

in said system; and they further deny that any part, lot or parcel of the revenues of said Union division have been by them diverted or expended for any other than the proper corporate obligations of the said Union Pacific Railway Company, or that any disposition has been made by them of any of the revenues of the said Union Pacific Railway Company, except as they have been disbursed and paid out or appropriated to the satisfaction of proper obligations of said The Union Pacific Railway Company, under and by virtue of the directions of the circuit court of the United States having jurisdiction over the subject-matter and over the said property and these defendants.

They admit that from and after their appointment as receivers of said The Union Pacific Railway Company in the year 1893 they operated all and singular all the properties of the Union Pacific Railway Company and of those various railroads operated in
58 harmony and connection therewith under the name of the Union Pacific system, and that the moneys derived from the operation and management of said The Union Pacific Railway Company as well as those other railroads hereinbefore mentioned, were used in and about and applied to the discharge of the obligations of the said Union Pacific Railway Company in respect thereto under such orders and directions from time to time as were made and given them by said circuit court of the United States, that being the court appointing them as such receivers.

And they further allege the truth to be that they so continued to maintain, operate and manage the said properties of the Union Pacific Railway Company under and by virtue of their appointment in said Ames cause above referred to, as well also as the properties mentioned, included in and described as the said Union Pacific system and which are mentioned and described in said tenth paragraph of complainants' bill, until about the 21st day of January, 1895, at which time by an order of this court in this cause these defendants were in like manner appointed receivers of the properties mentioned and described in complainants' bill and were therein and thereby directed to continue the operation of not only all of said property, but also all and singular the properties of the said Union Pacific system.

They further allege that the said order of their appointment as receivers in this cause on the application of complainants herein is a part of the record in this cause, and that its terms, provisions and conditions were and are binding upon the complainants herein for the use and benefit and protection of these receivers of and in respect to their various disbursements of moneys in respect to the properties of the Union Pacific Railway Company and to the orders made of and in respect thereto in this cause, and also in said cause known and described herein as the said Ames bill; and these defendants pray leave to refer to each and every clause, term and condition of the said order of their appointment herein, and to claim the full benefit thereof in every particular as though the same order were herein pleaded and set out at length, and that they may at all times in the course of this proceeding have the full benefit of each

and every term and condition in said order made and prescribed as and for their benefit and in the statement of their accounts and disbursements, and that they may have all proper credits for moneys paid out for them under and by virtue of their office as receivers herein or in said Ames cause.

They further allege that since their appointment as receivers herein they have applied the revenues arising from the
59 operation of all of the property in their hands as such receivers under and by virtue of the directions of the circuit court of the United States, and they now and here refer to those various orders made in respect to the payment of said moneys in this cause, as well also as to those orders made in respect thereto in said Ames cause, and make the same, by reference, a part of this their answer herein, praying that upon final hearing, or at any proceeding herein they may refer thereto with the same force and effect as though the same were specially pleaded herein, and that the court will, upon final hearing, ascertain the condition of the accounts of these defendants with reference to said properties and their disbursements of moneys herein, and that upon final accounting herein these defendants may be allowed out of the moneys arising from the operation of the Union Pacific Railway Company, and also all that part of the property mentioned and described in complainants' mortgage, all of their disbursements paid or made by them of and in respect to the property in their hands as receivers herein, or paid out by them under orders and directions of this court made and given in said Ames cause, so that for all of their disbursements so made they may have full, complete and perfect protection, and that the court will, upon final accounting herein, order and direct that for all moneys so by them paid out in excess of moneys received by them they shall have credit, and that for any deficiency which may exist or arise in their favor of and in respect to the operation and maintenance of the said properties or the payment of taxes thereon, they may have a lien on the properties mentioned and described in complainants' bill prior and superior to the lien of complainants herein, and such full and complete relief of and in respect to their management, operation and control of the said properties or any part thereof as may be necessary for their full, complete and final protection.

All of which these defendants stand ready upon the hearing of this cause and in accordance with the practice and procedure of this honorable court to maintain and prove, without this, that if there is any other matter, cause or thing in the said bill of complaint contained, material or necessary for these defendants to make answer to and not herein well and sufficiently answered, confessed or denied, is true, to the knowledge or belief of these defendants, all of which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall
60 direct, and they pray to be hence dismissed in this behalf accordingly.

THE RECEIVERS AFORESAID,
By JNO. M. THURSTON, *Their Solicitor.*

I hereby consent to the filing of the within as out of time.

WINSLOW S. PIERCE,
Solicitor for Complainants.

Indorsed: Filed June 24, 1895. Elmer D. Frank, clerk.

Thereupon afterwards, to wit, on the 3rd day of May, 1897, petition of Credits Commutation Company for leave to intervene was filed in said case, which said petition is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT.

DISTRICT OF NEBRASKA.

IN EQUITY.

UNITED STATES OF AMERICA, *Complainant,* vs. UNION PACIFIC RAILWAY COMPANY, ET AL., *Defendants.*	No. 157 S. IN EQUITY.
F. GORDON DEXTER AND OLIVER AMES, SECOND, TRUSTEES, *Complainant,* vs. UNION PACIFIC RAILWAY COMPANY, ET ALS., *Defendants.*	No. 48 R. IN EQUITY.
OLIVER AMES, SECOND, AND SAMUEL CARR, EXECUTORS, ETC., ET ALS., *Complainants,* vs. UNION PACIFIC RAILWAY COMPANY, ET ALS., *Defendants.*	No. 94 Q. IN EQUITY.

PETITION OF CREDITS COMMUTATION COMPANY FOR LEAVE TO INTERVENE IN THE ABOVE-ENTITLED CAUSES.

PART ONE.

OF THE PETITIONER'S STANDING AND INTERESTS.

RESPECTFULLY REPRESENTS your petitioner:

(1) That your petitioner is a corporation duly organized under the laws of the State of Iowa and is a citizen of that State, having its place of business in Sioux City in said State.

(2) Your petitioner owns all the stock of a combined railroad and wagon bridge recently completed across the Missouri river at Sioux City, at a cost of about a million and a quarter of dollars, and as beneficiary under an assignment, is entitled to three-quarters of the capital stock of the Sioux City and Northern Railroad Company, which has lately constructed, at a cost of about two millions, a railroad extending northerly from Sioux City about one hundred miles to a junction with the Great Northern Railroad, over whose lines it makes connection with the head of the Great Lakes at Duluth; also all the stock of another railroad company called the Sioux City, O'Neill & Western, built at about the same time at a cost of about two millions and a half, running one hundred and thirty miles west from Sioux City, Iowa, to O'Neill in Nebraska, which railroads are connected by the aforesaid bridge of your petitioner; also, the stock of said Sioux City and Northern Railroad Company also carries with it all the stock of a Terminal Company owning large and valuable terminal properties recently constructed in said Sioux City at a cost of about two mil-

lions, designed to accommodate the railroads aforesaid, and all other railroads running into Sioux City; and substantially all interests in said properties of alleged priority to the interest of your petitioner therein are claimed by your petitioner, but are in controversy and involved in pending litigation; and your petitioner owns or has a controlling interest in certain other extensive industries in said Sioux City, dependent upon railroad facilities and the rates of fare thereof, so that the cost of all the undertakings aforesaid represented by your petitioner herein amounts to about ten million dollars. And your petitioner is also representative of other interests hereinafter mentioned, which, your petitioner submits, entitles it to standing herein.

(3) And your petitioner shows that the comprehensive design and single purpose of all said quasi public enterprises of your petitioner was to promote and accommodate an interchange of traffic and transportation between the country west of the Missouri river at Sioux City and the head of lake navigation at Superior and Duluth, and that the usefulness and value of all said railroad terminal and bridge properties depend, for the most part if not almost wholly, upon such connection as may be made between the same and the main line of said Union Pacific Railroad, and upon the place of such connection, and the just and equitable terms thereof.

(4) That your petitioner was organized and acquired said properties and completed said bridge for the purpose, among others, of securing a connection thereof with said Union Pacific Railroad by building or causing to be built or extended a railroad from said Sioux City in a general southwesterly direction to a junction with said Union Pacific Railroad as aforesaid.

Your petitioner is also the owner of one of the first mortgage bonds hereinafter mentioned of the Union Pacific Railroad Company, and brings this petition for the protection of its several interests herein, for itself and all others in like situation who may choose to join in this petition.

(5) Said defendant, the Union Pacific Railway Company, purports to be a consolidated company, the constituents whereof were the Union Pacific Railroad Company and the Kansas Pacific Railway Company, which last-named company was, by assignments, transfers, and change of names, successor to a number of predecessor companies.

(6) Said Union Pacific Railroad Company was created by a certain Act of Congress, called the Act of July 1st, 1862, by which Act said Union Pacific Railroad Company and the predecessors of said Kansas Pacific Railway Company, and certain other companies, to-wit, the Central Pacific and the Western Pacific Railroad Companies, were authorized to co-operate in building a single and entire line of railroad and telegraph with three branches on the east which were to converge from Sioux City, Council Bluffs, and Kansas City, all on the Missouri, to a common junction to the westward thereof on or near the one hundredth meridian of longitude, and thence to extend westerly in a single trunk line to the Pacific Ocean.

(7) And that "to secure to the government the use of the same for postal, military, and other purposes," Congress, in and by said Act, conferred upon said companies grants of vast and valuable tracts of the public lands, and certain rights, privileges, and franchises, and

further subsidized said companies by a large advance to them of the public credit in the form of the bonds of the United States, all to aid in the construction of said roads.

PART TWO.

OF THE PUBLIC AND QUASI-PUBLIC OBLIGATIONS OF SAID UNION PACIFIC RAILWAY COMPANY, ESPECIALLY PERTINENT TO THE RIGHT OF YOUR PETITIONER TO INTERVENE IN THE FIRST OF THE ABOVE ENTITLED SUITS—THAT ONE BROUGHT BY THE UNITED STATES.

(8) All the grants, rights, privileges, and franchises aforesaid were made to said companies on condition that said companies should pay said subsidy bonds at the maturity thereof; and to secure the payment of said bonds and interest thereon, a statutory first mortgage or lien was by said Act created upon the roads and properties of said bond-aided Pacific Railroad Companies, and further, by said Act and in consideration of the public aid aforesaid, certain duties, obligations, and servitudes were imposed upon said companies, their successors and assigns, and upon the railroad constructed by them and the operations thereof, and were by said companies assumed in the acceptance of said Act.

(9) Your petitioner, showing that the public credit and domain are not subject to disposition by the government for the general benefit of the government as such, but only for limited purposes of the government, and may for the most part be disposed of only in consideration of benefits to be thereby secured to the public generally, or such of the public as may wish, or have any peculiar interest, to avail of such benefit, and may not be disposed of by the executive department of the gov-

ernment at all without the authority of Congress, says that certain public and quasi public duties, obligations and servitudes were imposed upon said bond-aided Pacific Railroad Companies and their respective railroads in consideration of the public aid and grants rendered to them by the United States as aforesaid, in most of which your petitioner has interests in common with the public and special and peculiar to itself, all of which are put in jeopardy as hereinafter stated and for the protection or defence of which no party appears in said proceedings. Your petitioner says that said public and quasi public duties, obligations and servitudes are divisible into classes substantially as follows:—

First: Such as are due to such of the public as may wish or have any peculiar interest to avail of the benefit of performance.

Second: Such as are due to certain sections of the country.

Third: Those due both to the government as such and to the public.

Fourth: Those not due to the government as such, and the benefit whereof is intended to inure wholly to the public.

Fifth: Those due to the government as such, but in the performance whereof the public or some of the public have general or peculiar interests.

Sixth: Those due to the government as such, and in which the public or any member of it has no interest.

OBLIGATIONS OF SAID COMPANY DUE TO THE PETITIONER.

FIRST: BECAUSE OF ITS OWN SPECIAL OR PECULIAR INTERESTS.

(10) Among the duties, obligations and servitudes first above described, performance whereof is due to such of the public as may wish or have any peculiar interest to avail of the benefit thereof, are those contained in the fifteenth section of said Act of July 1st, 1862, as follows—

"Sec. 15. AND BE IT FURTHER ENACTED, That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon such just and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto."

Your petitioner shows that, by the provisions aforesaid, the President of the United States must fix the place of connection with said Union Pacific Railroad before any company desiring the same can be sure that its incorporated location will conform therewith.

(11) Your petitioner was organized in the latter part of the year 1894, but has abstained from making any application to the President of the United States to fix the place at which and the just and equitable terms upon which your petitioner should build a railroad to connect with the road of said Union Pacific Railway Company; because said company had become embarrassed and all its property was and ever since has been in the hands of receivers appointed by this Court, and said company was and ever since has been apparently insolvent, and bills in equity have been filed, in this Court and others,

to obtain foreclosure in behalf of certain alleged first mortgage bonds purporting to have been secured by liens and mortgages upon the road of said company; under which circumstances any such application would seemingly have been ill-timed and unavailing. And especially has your petitioner thus abstained, for the further reason that the obligations of said railroad company to pay certain subsidy bonds hereinafter mentioned has been in the meantime maturing, and legislation to adjust the indebtedness thereof and to avail of the security therefor and to provide for a reorganization of said company has been constantly pending before Congress, to which tribunal, as the more appropriate to safeguard your petitioner's interests, your petitioner has constantly appealed by appearing before committees of both branches of Congress, and thus and otherwise urging the enactment of just and suitable laws for the protection of your petitioner's said interests; and while thus engaged and while the Congress was intent upon the matter, your petitioner was surprised with the information that the Attorney-General had entered into an agreement to prosecute and submit to foreclosure sales of or under the lien of the United States, and other alleged liens upon the property of said Union Pacific Railway Company securing said subsidy bonds and certain other bonds asserting a lien in priority to the lien of the United States, and had filed his bill in behalf of and purported to have entered an appearance for the United States in the foreclosure suits aforesaid to effect such sale of said Union Pacific Railroad.

(12) Your petitioner, to protect the interests peculiar to itself as aforesaid against the threatened danger of any deprivation of a right to build its railroad to and to

connect the same with said Union Pacific Railroad on just and equitable terms, as aforesaid, by any foreclosure sale in the premises, asks to be admitted a party hereto.

SECOND: OF THE DUTIES OF SAID BOND-AIDED PACIFIC RAILROADS TO DIFFERENT SECTIONS OF THE COUNTRY.

(13) Further, your petitioner submits that the local and peculiar public interests represented by your petitioner practically determine the place at which and the just and equitable terms upon which your petitioner should be allowed to build or extend a railroad to a junction with the Union Pacific Railroad under the provisions of the act above quoted.

(14) Your petitioner says: That a purpose is declared in said Act of July 1st, 1862, and in the debates of Congress, whereby the passage thereof and of other acts amendatory thereto were secured to give to all sections of the country east of the Missouri river and to the existing and prospective railroad systems thereof participation in and equal aids and facilities to avail of the benefit of the transcontinental transportation to be afforded by the national aid rendered to said Pacific Railroads; and to that end it was provided in said act that the eastern terminus or initial point of the trunk line of said Pacific Railroads should be at the one-hundredth meridian of longitude, from which three branches should diverge to points on the north and south trend of the Missouri river, from and between Sioux City on the north

and Kansas City on the south, which were to compose two of said branches; and Council Bluffs was afterwards named as the easterly end of the third branch. That the provision in behalf of Sioux City and the middle Northwest is in Section 14 of said Act of 1862, as follows:—

"And whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific Railroad Company is hereby authorized and required to construct a railroad and telegraph from said Sioux City upon the most direct and practicable route to a point on, and so as to connect with, the branch railroad and telegraph in this section hereinbefore mentioned, or with the said Union Pacific Railroad, said point of junction to be fixed by the President of the United States, not further west than the one-hundredth meridian of longitude aforesaid, and on the same terms and conditions as provided in this act for the construction of the Union Pacific Railroad as aforesaid, and to complete the same at the rate of one hundred miles per year; and should said company fail to comply w th the requirements of this act in relation to the said Sioux City railroad and telegraph, the said company shall suffer the same forfeitures prescribed in relation to the Iowa branch railroad and telegraph hereinbefore mentioned."

(15) That afterwards, by a certain other act, known as the Act of July 2nd, 1864, said Kansas City branch was allowed to proceed straight west from that city to Denver, and thence to connect with the main line of said Union Pacific Railroad at Cheyenne; substantially like rights and on similar conditions to connect the Sioux City branch at a point further west than the one hundredth meridian were also accorded, and the Union Pacific Railroad Company was relieved from building the same; all in Section 17 of said Act of July 2nd, 1864, as follows:—

"And be it further enacted, That so much of section fourteen of said Act as relates to a branch from Sioux City be, and the same is hereby, amended so as to read as follows: That whenever a line of railroad shall be completed through the States of Iowa, or Minnesota, to Sioux City, such company, now organized, or may hereafter be organized, under the laws of Iowa, Minnesota, Dakota, or Nebraska, as the President of the United States, by its request may designate or approve for that purpose, shall construct and operate a line of railroad and telegraph from Sioux City, upon the most direct and practicable route to such a point on, and so as to connect with, the Iowa branch of the Union Pacific Railroad from Omaha, or the Union Pacific Railroad, as such company may select, and on the same terms and conditions as are provided in this act and the act

to which this is an amendment, for the construction of the said Union Pacific Railroad and telegraph line and branches; and said company shall complete the same at the rate of fifty miles per year; Provided, That said company constructing said branch shall not be entitled to receive in bonds an amount larger than the said Union Pacific Railroad Company would be entitled to receive if it had constructed the branch under this act and the act to which this is an amendment; but said company shall be entitled to receive alternate sections of land for ten miles in width on each side of the same along the whole length of said branch."

(16) Your petitioner says that said amendment was not intended or understood to vary the general location or direction of said Sioux City branch, and that the construction thereof would have afforded to Sioux City and the middle Northwest and the head of lake navigation more than three hundred miles of as direct western connection with the Union Pacific as that secured to and enjoyed by the other sections of the country served by the other branches; that the scope of said acts to the general intent aforesaid and including the contemplated location and direction of said Sioux City branch was after both said acts were passed in effect judicially declared by the Supreme Court in the case of Union Pacific Railroad Company v. Hall, 91 U. S., 343.

(17) Your petitioner begs to call attention to the fact that not only the towns at the three eastern termini of the branch lines aforesaid were intended to be equally and alike benefitted by connection with the trunk line aforesaid, but that provision was made for participation therein by all other prospective railroad centers on the stretch of the Missouri river above mentioned; the company which was to build the Kansas City branch was required either to locate said road by way of Leavenworth, or to build a branch to Leavenworth; a line from St. Joseph was either to reach the Pacific Railroad's system by way of Atchison, from which last-named place

a connecting line was also to be subsidized, or an unsubsidized line from St. Joseph could be built to a direct connection with said Union Pacific Railroad.

(18) And your petitioner shows that said three bond-aided branches were to enjoy certain advantages and privileges of great and almost inestimable value to themselves and the sections of the country to be served by them, especially as set forth in the fifteenth section of said Act of July 2, 1864, as follows:—

"Sec. 15. AND BE IT FURTHER ENACTED, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and the Government are concerned, as one continuous line; and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others."

(19) But your petitioner says that the section and traffic to be served by the branch from Sioux City were substantially deprived of the promised connection with said Pacific roads and are threatened with an extinction of all the rights and protection secured to all the branches alike in said fifteenth section of said Act of 1864 aforesaid, by the declared purpose in the above-entitled causes to procure a sale of the rest of said Union Pacific Railroad, without including therein and as a part thereof any connection with Sioux City and the middle Northwest whatever.

(20) To show more explicitly the sectional grievances of the middle Northwest and Sioux City and the injury to the then existing and prospective traffic and business thereof and to your petitioner, your petitioner says that, under the provisions of said Act of 1864 hereinbefore mentioned, the President designated a corpora-

tion known as the Sioux City and Pacific Railroad Company to build said Sioux City branch, which company had already theretofore surveyed a location for a road of its own, ostensibly as a feeder—which, in fact, it always has been—to another railroad, known as the Chicago and Northwestern, then building across said State of Iowa to a prospective junction with the Council Bluffs branch of the Union Pacific Railroad at or near Fremont in the State of Nebraska, both which feeder and said Chicago and Northwestern Railroad were apparently, and your petitioner on information and belief alleges were, in truth and in fact, owned and controlled by substantially the same men and in a common interest.

(21) And your petitioner, on information and belief, says that the officers and controllers of said Sioux City and Pacific Railroad Company, conspiring and confederating to divert the grants and subsidies of the government from aid to the construction of the Sioux City branch of said Union Pacific Railroad on the true and contemplated line and location thereof aforesaid, and to avail of the same for the building of said feeding line to said Chicago and Northwestern, and to aid in the extension of the latter, made and procured to be made to the departments of the government whose sanction and approval were necessary in the premises, misrepresentations in substance and effect that high and precipitous bluffs on the banks of the Missouri river opposite Sioux City, and the absence of any valleys or ravines through the same, and the presence of formidable hills and reservations occupied by possibly hostile Indians, and other and like moral, physical and other insurmountable obstacles prevented the construction of the Sioux City branch of said Union Pacific Railroad along the line and

location contemplated by the laws relating thereto, and misrepresentations to the effect that the most direct and practicable route for such connection was on the line already theretofore selected for its own road by said Sioux City and Pacific Railroad Company, and then over the Chicago and Northwestern Railroad, which it was to join, through to Fremont aforesaid; and having by such means procured the acceptance of said location, it constructed said branch on its own location aforesaid, whereby the same was made to run from Sioux City in a general southeasterly direction away from the Pacific down the eastern bottom-lands of the Missouri river about seventy miles, at which point it is twenty or thirty miles further from the Pacific than when it started; and there joining the Chicago and Northwestern Railroad, it proceeds west, supplementing and extending the last-named railroad to Fremont, where, after completing a total length of but little over one hundred miles from Sioux City, it ended almost due south thereof in a junction with the Council Bluffs branch of said Union Pacific aforesaid.

(22) None of the alleged obstacles to the construction of said branch on the location contemplated by the Acts of Congress did in fact exist. The mislocation of said branch and misdirection of the government's aid aforesaid at once became and ever since have been of public notoriety and a cause of constant protest and complaint on the part of sections immediately affected, the public records whereof are too voluminous to permit any exhaustive recital thereof herein; but your petitioner begs leave to call attention at the hearing in support hereof, to the reports of committees and commissions appointed by Congress, and the reports of the various de-

partments of the government, the debates in Congress, and the resolutions of the legislatures of the Middle Northwestern States thereon. Wherefore, your petitioner submits that said Sioux City and Pacific Railroad Company did "not complete the said branch from Sioux City to the Pacific Railroad within ten years from the passage of this act (of July 2, 1864, Sec. 17) as contemplated by the provisions of this act"; and for that reason by said section of said act, "all the railroad which shall have been constructed by said company shall be forfeited to and become the property of the United States."

(23) The Middle Northestern States were in manner aforesaid and ever since have been cut off from the connection with the Pacific Railroad systems as contemplated, and, to correct this wrong, or, at least, to prevent a continuance of the consequent discrimination against that section and Sioux City, your petitioner, when said Pacific Railroad Companies were becoming bankrupt and in default in their obligations to the United States, sought relief from Congress, whereby the promised connection aforesaid might be secured in any reorganization of said companies or their properties which Congress should permit; and in furtherance of their just demands represented by your petitioner aforesaid herein, business associations and the people in the towns and cities and associations in the Middle Northwestern States supported your petitioner, with petitions and memorials addressed to Congress, to which your petitioner craves leave to refer at the hearing.

(24) While your petitioner was seeking the aid of Congress in the premises, the Attorney-General filed his bill in the first of the above-entitled suits for foreclosure

sale and purported to enter his appearance for the United States in the second of said suits; in both which proceedings it is the manifest and declared purpose to sell the trunk line of said Union Pacific Railroad, together with the branches thereof aforesaid from Kansas City and from Council Bluffs as one property and an entirety, whereby said branches and the cities and sections at the eastern terminus and along the lines thereof will preserve their connection with said Union Pacific Railroad and participation in its business as contemplated, but it is not intended and is impossible, for want of default, to include in said sale as a part thereof the line of said Sioux City and Pacific Company, so that even that pretended but inadequate connection of Sioux City and the Middle Northwest with said Union Pacific Railroad as a part thereof and entitled to the terms of connection aforesaid will in any such sale be taken away.

(25) Your petitioner, showing that there are now large railroad systems entering Sioux City, and which have no connection with said Pacific Railroad, and that your petitioner owns or controls the best and practically the only terminals, bridges and facilities in the Middle Northwest to accommodate such connection, and being desirous of building a railroad to effect the same, begs leave to intervene herein to protect its right so to do, and either to prevent any foreclosure sale of the Union Pacific Railroad, or to secure in any decree therefor, among other just and equitable terms of the right to connect therewith, the benefit of the provision of the laws above quoted, just as if your petitioner's proposed road had been built in place of said Sioux City and Pacific Railroad, which cannot be sold in said foreclosure proceedings, and otherwise to protect the interests owned and

represented by your petitioner in the premises against the risk of any deprivation of any of the same by any foreclosure sale herein.

THIRD: OF THE OBLIGATIONS OF SAID BOND-AIDED RAILROADS DUE BOTH TO THE GOVERNMENT AS SUCH, AND TO THE PUBLIC.

(26) Your petitioner begs leave to submit as a proposition supported by the law and facts relied upon in every part of this petition, that in contemplation of the government and the people, the bond-aided Pacific Railroad Companies built but one railroad, and none of it can be sold separate and apart from the rest; that your petitioner, as owner and controller of large shipping and receiving interests hereinafter explained, is entitled to standing in its own right, without intervention of the United States, and beyond their control, except by act of Congress, to have the unity of the system of roads preserved.

(27) In addition to the acts hereinbefore quoted, which show the unity of the road, attention is called to other like provisions. The title of said Act of 1862 is: "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the government the use of the same for postal, military, and other purposes."

The acts constantly speak of it as one railroad. By Section 12 of the Act of 1862, "The track upon the entire line of said railroad and branches shall be of uniform width * * * so that, when completed, cars can be run from the Missouri River to the Pacific Coast." The building companies had few or no separable and inde-

pendent rights, but they could consolidate, and, under certain conditions, the location of either could be changed by others so as to make it conform to their own, both as to branches (Sec. 9, Act 1862) and the meeting of trunk lines (Sec. 12, Act 1864; Act of July 3, 1866; Act of May 6, 1870). If any of said companies failed to build fast enough to complete its alloted part in the time limited for that purpose, the others, one or more, could build in its place, and, finally, the ones that built the fastest could build the most (Section 10, Act 1862; Sections 12 and 16, Act 1864; Act July 3, 1866).

The place for connection of the eastern and western ends was fixed three times by Acts of Congress (Sections 1 and 9, Act of 1862; Sec. 12, Act of July 2, 1864, and Act of May 6, 1870.) The companies respectively were required to transport the materials required by each other at cost (Section 12, Act of 1862.)

This idea of one road was carried so far that, by Section 17 of said Act of 1862, it was—

"Provided, That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri River to the navigable waters of the Sacramento River, in California, by the first day of July, eighteen hundred and seventy-six, the whole of all of said railroads before mentioned and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling stock, machine shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States."

Though this harsh provision was modified by Section 7 of the Act of 1864, insistance upon the unity of the road was not in any way relaxed, and the condition was retained, that for a failure to complete the whole, or for any failure afterwards—that is, now or hereafter—to keep the whole in repair, the United States could and can take the whole and use the income of the whole to repay the expenses of such repair (Sect. 17, Act 1862).

(28). Among other obligations and servitudes to preserve the unity aforesaid imposed upon said companies and road, and which are expressly due both to the government as such, and to the public, is the following, from Section 12 of the Act of 1862, substantially repeated in Section 15 of the Act of 1864:

"The whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the government and the public are concerned, as one connected, continuous line."

Attention is called to the fact that even though it be held that the lien of the subsidy bonds does not extend over any but bond-aided lines (United States v. Kansas Pacific Railway Company, 99 U. S., 455), yet the rights of the government in and to the use of the roads were secured by the grants of land rather than by the bond subsidy. Act, July 1st, 1862, Sec. 3. And the continuity of the whole was insisted upon.

By the Act of March 3rd, 1869, lands were granted to the companies building the extension of the Kansas Pacific line from the three hundred and ninety-fourth mile post west by way of Denver to Cheyenne, and it was enacted that:

"All the provisions of law for the operation of said Pacific railroad as a continuous line should apply to said extensions."

In the case of the United States v. Union Pacific Railway Company, 148 U. S., 562, the company successfully contended that the foregoing line was "continuous" within the acts aforesaid, the Court saying that the builders were "two corporations engaged in a construction of the same line of road."

(29). That said Section 15 of the Act of July 2nd, 1864, hereinbefore quoted, which secured co-operation between the roads and branches without discrimination

and re-enacted that they were to be operated as a continuous line, was by an Act of June 20th, 1874, amended so as to make it a criminal offense for those having the roads in charge to refuse so to operate them, and imposed punitive damages on the companies in behalf of anybody aggrieved by the refusal, and by the same act the Denver and Cheyenne connection was again made a part of the continuous line.

And that by Section 11 of the Thurman Act (May 7, 1878), the failure of any of the companies to perform the requirements of any of the acts aforesaid, for a period of six months, should operate as forfeiture of all rights, privileges, grants, and franchises derived or obtained from the United States.

(30). Wherefore, your petitioner shows that "so far as the government is concerned," any sale of the Union Pacific Railway or any part thereof without the contemporaneous sale of the whole, including the Sioux City branch thereof, and the Central Pacific Railroad too, and by which sale the whole or any part of either should pass to a purchaser free from the foregoing obligations, and that any operation of either or any part of either of said roads, as if so freed, would not only defeat the declared purpose of all aid rendered by the government, but would constitute a crime against it punishable by the imprisonment of the natural persons and the death and forfeiture to the government of the franchises and property of the offending company.

(31). That "so far as the public is concerned," such sale and operation subjects the offending company to punitive damages (Sec. 15, Act of July 2nd, 1864; Act of June 20, 1874). That by the act of May 3rd, 1873, any

Circuit Court of the United States can issue mandamus to the Union Pacific Railway Company to compel such continuous operation. That this applies to the branches as well as the main lines. That the mandamus shall issue on the application of your petitioner, to which proceedings the United States are not a pertinent party, all as held in

Union Pacific R. R. Co. v. Hall, 91 U. S., 343.

(32). Your petitioner calls attention to the fact that the foregoing case expressly recognizes the right of Sioux City to branch connection just like that then sustained by the court, and your petitioner submits as obvious that any foreclosure sale of all the rest of said Union Pacific Railroad separate and apart from the Sioux City branch, would be wholly destructive of the right aforesaid.

(33). Your petitioner is interested, as was the defendant in the above entitled case, in the act above quoted; as are also all the shippers and receivers of goods in said Sioux City and the country round about there, by transportation over the line of said Pacific Railroad; and especially has your petitioner an interest for this, that it owns the most valuable and controlling interest in the Sioux City Stock Yards Company, on which are located many large packing plants, making Sioux City one of the large packing points in the country, and constituting the principal industry of that city, and animals to supply the products thereof are, and under favorable connections and reasonable rates of fare, would be, largely drawn from the territory occupied by said Pacific Railroads.

FOURTH: OF THE OBLIGATIONS OF SAID COMPANY NOT DUE TO THE GOVERNMENT AS SUCH, THE BENEFIT WHEREOF IS INTENDED TO INURE WHOLLY TO THE PUBLIC.

(34). Among other provisions of the acts for aiding said Pacific road, which secures the unity thereof, and to inure to the benefit of the public rather than to the United States as such, is the following from Section 18 of the Act of July 1, 1862:

"Sec. 18. AND BE IT FURTHER ENACTED, That whenever it appears that the net earning of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs, and the furnishing, running, and managing of said road, shall exceed ten per centum upon its cost, exclusive of the five per centum to be paid to the United States, Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law."

(35). Your petitioner begs to call attention to the fact that this act requires the earnings of the "entire road" to be united and when such earnings exceed ten per centum upon its cost, Congress may reduce the rates of fare thereon, that is, on the "entire road."

(36). Your petitioner further shows that the reservation of power was not for the benefit of the United States and to secure the payment of its debt but obviously the reverse, and, in the sole interest of the public; for the earnings to be taken into account as aforesaid expressly include compensation for service rendered to the Government by the roads, which compensation, by other provisions of said act, was to be retained for the payment of the subsidy bonds and interest, the amount of which retention would be reduced by a reduction of rates of fare. It also contemplates that a reduction of rates of fare will necessarily reduce the five per centum of net earnings also to be paid to the government.

(37). And your petitioner, interested in the rates of fare on said road as aforesaid, submits that its right, in common with the right of all the public similarly situated, to petition Congress for the exercise of the power reserved to it as aforesaid, and the power of Congress to comply therewith cannot be taken away by a sale of said road, and especially not by a sale of a part thereof and the dismemberment of the same merely on the consent of the executive department or law officers of the government.

(38). Your petitioner submits that the powers and discretions which the Government and the President and the Congress and the Courts may exercise in the premises as hereinbefore set forth constitute a trust for the benefit of the public, the observance whereof is secured as a perpetual servitude imposed upon said railroads as an entirety, and should run with their properties and franchises as an entirety, to which all mortgages are subject, which the redemption of the subsidy bonds by the companies receiving the same would not terminate, and which, without authority from congress, the executive department of the Government should not attempt to extinguish by any sale in behalf of the Government's lien; and subject to which the Government would take the property in any forfeiture to or strict foreclosure in behalf of the United States, since the Government should itself be so bound as contemplated in the last part of Section 15 of the Act of 1862, even if provision in behalf of the public be not applicable to any other successor of said Union Pacific Railroad Company.

FIFTH: OF THE OBLIGATIONS OF SAID RAILROAD COMPANIES DUE TO THE GOVERNMENT AS SUCH, BUT IN THE PERFORMANCE WHEREOF

THE PUBLIC, OR SOME OF THE PUBLIC, HAVE A GENERAL OR SPECIAL INTEREST.

(39). Notwithstanding the contention of this petitioner that the rights and interests of the public and of your petitioner as a member thereof in said Pacific Railroad as hereinbefore stated would survive any foreclosure sale of said road in pursuance of any mortgage upon the same or any part thereof, yet your petitioner is apprehensive that if the government were to subject its interests in said road to sale to a stranger, such purchaser might claim that the right of the President of the United States to fix the place at which and to prescribe the just and equitable terms upon which your petitioner could connect a railroad with said Pacific Railroad was a power in the President, coupled with the interest of the United States; and that, upon such voluntary parting with that interest, the exercise of such a power would be a mere judicial function which could not be imposed upon the chief of the Executive branch of the Government, and, in like manner, that the right of Congress to reduce the rates of fare on said railroad was also a power coupled with an interest, and after such sale would be become a judicial function which could not be imposed upon the legislative branch of the government, and that the provision whereby the government may take the entire road and devote all its earnings to keep the whole in repair should, as a like power, be also lost by a sale of any part of said road with the Government's consent, and that the right of the Government to insist that said railroad shall be operated and used as a connected, continuous line from the Missouri river to the Pacific Ocean should be held to have been waived by a voluntary sale of a part and dismemberment of said road by or in be-

half of the United States; and your petitioner submits that an auction sale of said road by the United States, with no restrictions except to the highest bidder, would not only terminate the right of Congress to amend, alter, and repeal said Act of July 1st, 1862, as, by Section 18 of said Act, Congress may now do to promote the public welfare by keeping said railroad in working order for the use of the government at all times and particularly in time of war, but would even enable the contemplated enemy in such a war to become the purchaser.

(40). Your petitioner submits that, while the United States retains its interest in said railroad, or if said Companies shall simply discharge their financial obligations to the United States, as originally intended, none of he foregoing contentions can be raised, and that no sale of the interest of the United States should be made or suffered without the authority of Congress and the enactment of such laws for the protection of the government and public in the premises as Congress may see fit to impose as a condition of such sale.

Wherefore, your petitioner is interested in the lawful manner of the enforcement of the obligations of said Pacific Railroad Companies which are due to the United States as such.

(41). Your petitioner says that said bond-aided railroad companies are under obligation to redeem at maturity the subsidy bonds received by them, and concedes that this undertaking pertains to said companies severally to redeem the bonds they respectively received; that a failure of any company to do so does not work forfeiture, as hereinafter mentioned, by any other company (see Section 7, Act of 1864); that that obligation is due to

the United States as such, and that the enforcement of remedies for breach of the obligation is the duty of the law officers of the Government alone; and that the scope of their duties in any case wherein it is sought to proceed against any interest of the United States in a Federal Court, is to suggest such interest to the Court (Stanley v. Schwalby, 147 U. S., 508), whereupon it becomes the duty of the Court to protect that interest if possible, and, if not, then to decline further jurisdiction in the case (Cunningham v. Macon R. R. Co., 109 U. S., 446), all without appearance or suggestion by friends of the Court or other parties to the suit.

(42). But your petitioner relies upon the right which any party in interest has to the writ of mandamus from the Courts of the District of Columbia to compel the Attorney-General or any other cabinet officer of the Government to perform any duty whereunto he is expressly commanded (U. S. ex rel Oscar Dunlap v. Black, 128 U. S., 40); and to a writ of injunction from said Court to restrain such officer from disregarding or violating any such command.

Noble v. Union River Logging R. R. Co., 147 U. S. 165.

(43). And your petitioner submits that in a proper case in which the rights or property of the government is involved in a Federal Court which cannot issue mandamus or injunction to the Attorney-General as aforesaid, any party interested in the performance by the Attorney-General of any duty whereunto he is commanded, and which he neglects or refuses to perform, should have standing of necessity to make suggestions to the Court of the duty of the Attorney-General, so that the

proceedings may conform thereto, or, if not so, then such party should have standing to proceed against any private citizens confederating or co-operating with the Attorney-General to secure the avoidance by him of his duty, and to have such private citizens enjoined.

(44). Your petitioner submits that this should be especially true in the case at bar, because of the express provision of Section 10 of the Act of Congress known as the Thurman Act (May 7, 1878), relating thereto, as follows:

"Sec. 10. That it is hereby made the duty of the Attorney-General of the United States to enforce, by proper proceedings against the several railroad companies respectively or jointly, or against either of them, and others, all the rights of the United States under this act and under the acts hereinbefore mentioned, and under any other act of Congress or right of the United States; and in any suit or proceedings already commenced, or that may be hereafter commenced, against any of said companies, either alone or with other parties, in respect of matters arising under this act, or under the acts or rights hereinbefore mentioned or referred to, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to."

And your petitioner shows that the first of the above-entitled suits is within the provision of said Act, and that there are other proceedings against said Union Pacific Railway Company pending in the second and third of the above-entitled suits, such as may authorize or require the intervention of the Attorney-General therein under the Act aforesaid.

(45). And thereupon your petitioner begs leave to show that said Union Pacific Railway Company, all its property and assets were, in or about the spring or summer of the year 1893, put into the hands of receivers appointed by this Court in the third of the above-entitled suits.

(46). That said company then and for a long time theretofore was and ever since has been insolvent, without money, and unable to pay its indebtedness, and ever since the appointment of said receivers has been out of the operation and control of the said railroad and wholly unable to comply with and has not by itself complied with any of its duties and obligations in respect of the operation thereof, and that all requests, requirements, and demands upon it by itself to perform the same are and ever since the appointment of said receivers have been necessarily and notoriously useless and unavailing.

(47). But your petitioner is ignorant as to whether said Union Pacific Railway Company is in any default to the United States merely for failure to redeem any of said subsidy bonds, or to pay the interest thereon; on a correct application of the theory of accounting apparently adopted by the Supreme Court in the case of The United States vs. Union Pacific Railroad Company, 91 U. S. 72, it is not; but your petitioner submits that if and whatever so in default the remedies to which the United States are entitled and the duties of the executive departments of the Government in respect thereof are as follows:

(48). That is to say, all or the greater part of the road-beds and large tracts of land and all or most of the rights, privileges and franchises of said Union Pacific Railway Company were, by succession, derived from grants made by the United States in said Act of July 1st, 1862, wherein, in the sixth section thereof, it is expressly declared and limited:

"Section 6. And be it further enacted that the grants aforesaid are made upon condition that the said Company shall pay said bonds at maturity."

(49). That further, by the preceding section of the same Act, it was provided:

" * * * and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States."

(50). That after said Act and by the Thurman Act so-called (Act of May 7, 1878, Section 11), it was further expressly enacted as follows:

"Sec. 11. That if either of said railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed, for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced."

(51). Your petitioner begs leave to quote from the argument of the Railroad Company itself as reported in the case of

The United States v. Union Pacific R. R. Co.,
91 U. S., 72.

"We come next to the question of looking to those provisions as to the mode of repayment. At what time, if at all, if the Government may proceed by assumpsit for either bonds or interest, does the Act contemplate that there may be a default in the payment? And we answer that such a default will occur at the maturity of each bond if from the sources thus provided and a statement of the account and the application of the sums earliest due from the Government in the payment of the sums earliest due to the Government, be they principal or interest, any such interest shall be found to be due.

"This results from the fact that there is no provision in this clause for a statement of account by the Secretary of the Treasury every six months."

And again—

"Throughout the charter, the provisions to protect the Government, we submit, are in clear terms either indisputable common law, strict conditions, or a mortgage which is shaped as a strict condition allowing no equity of redemption, but providing a mere summary forfeiture."

(52). The Court practically adopted this construction in that case, and, dwelling upon the fact that a forfeiture would follow any default under the sixth section of the Act of July 1st, 1862, held that there would be default in the repayment of the interest on the subsidy bonds only when the principal matured at which time "there was left for the Government the entire property of the corporation, of which immediate possession could be taken on a declaration of forfeiture. * * * Congress * * * rested satisfied with the entire property of the Company as security for the ultimate payment of the principal and interest of the bonds."

(54). But if any bonds are due and any demand were necessary, your petitioner shows that the Secretary of the Treasury appears to have made it, as alleged by the Attorney-General in his bill, and that at least such bill is itself a demand, and, if maintainable, the prayer thereof for foreclosure sale is idle and futile, since at the farthest in six months from the filing of the same the proceedings thereof must, by explicit command of Congress, be followed or superseded by proceeding to have a forfeiture to the United States judicially enforced.

(55). Your petitioner calls attention to the suggestion filed by the Attorney-General in the third of the above entitled causes as to the extraordinary complications of titles and interests involved in the properties of said Union Pacific Railway Company, and the great length of time and probable litigation necessary to determine the same, and also to the same difficulties as shown in the bills of foreclosure and the answers in both the above entitled causes. And your petitioner submits that more than six months will be required for the ascertainment of what properties and interests may be sold in foreclosure proceedings in either the first or second of

the above causes, and that if the forfeiture to the United States under the Thurman Act is not already complete no sale could be had under any pending foreclosure proceedings until long after it becomes so, when no sale of the absolute property of the United States, without act of Congress can be had at all, and at which time no steps to foreclose, as mentioned in the Act of March 3rd, 1887, on any such property, will be necessary to protect the interest of the United States therein.

(56). Your petitioner admits that there may be doubt as to whether the foregoing forfeiture provision of the Thurman Act does not impair the obligations of the contract, but submits that it is supported by the fifth and sixth sections of the Act of July 1st, 1862, as heretofore construed by the Supreme Court. And further submits that if it does so impair the contract, a foreclosure sale would do so equally or in a greater degree. While if it does not impair the contract and is operative, it cannot now be followed by any immediate foreclosure sale without the substantial destruction of the interest of the United States in the property or proceeds; for the forfeiture includes the franchises, among which is the franchise to be a corporation; so that, after any forfeiture, there can be neither service upon nor judgment against said company in behalf of first mortgage bondholders or the United States, and all suits should abate, as there are no statutes to preserve the existence of the Company, even for winding up purposes. And it is submitted that if a sale were had under such circumstances, good faith on the part of the Government would require the Government to pay the first mortgage bonds out of the proceeds, including the sinking fund, hereinafter mentioned, and to limit any application thereof in its own behalf to such of the subsidy bonds as matured before the debtor was discharged from further obligation by ceasing to exist.

(57). The only remaining remedies of the United States against the properties of the Company are set forth in the fourth section of the Act of March 3, 1887, as follows:

"Sec. 4. That whenever, in the opinion of the President, it shall be deemed necessary to the protection of the interests and the preservation of the security of the United States in respect of its lien, mortgage or other interests in any of the property of any or all of the several companies upon which a lien, mortgage, or other incumbrance, paramount to the right, title or interest of the United States for the same property, or any part of the same, may exist and be then lawfully liable to be enforced, the Secretary of the Treasury shall, under the direction of the President, redeem or otherwise clear off such paramount lien, mortgage or other incumbrance by paying the sums lawfully due in respect thereof out of the Treasury; and the United States shall thereupon become and be subrogated to all rights and securities theretofore pertaining to the debt, mortgage, lien or other incumbrance in respect of which such payment shall have been made. It shall be the duty of the Attorney-General, under the direction of the President, to take all such steps and proceedings, in the courts and otherwise, as shall be needful to redeem such lien, mortgage or other incumbrance, and to protect and defend the rights and interests of the United States in respect of the matters in this section mentioned, and to take steps to foreclose any mortgages or lien of the United States on any such railroad property."

(58). Your petitioner calls attention to facts as follows:

That the general scope of said section and of the section which follows it looks to the acquisition of other liens by the Government, and not to the sale of its own.

It authorizes foreclosure but not foreclosure sale.

That the remedy of the fifth section of the Act of 1862 was defective in that it did not expressly authorize the Secretary of the Treasury to take possession of the telegraph line as well as the railroad line for default.

That the sixth section of the same Act of 1862 could only work a reverter of the property and franchises granted to the Company by the United States, and that the forfeiture in the eleventh section of the Thurman Act was strictly limited to things derived from the United States, notwithstanding the ninth section of the same Act purported to give to the United States a lien upon all the property of the Company without regard to where it came from.

Also to the fact that said Union and Kansas Pacific Railroads had in the meantime constructed and acquired railroad extensions not bond-aided and which were not derived from the United States and upon which Congress had expressly allowed mortgages to be placed by other than the bond-aided companies.

In the light of the foregoing circumstances, the necessity for and limit to the scope of the Act of March 3rd, 1887, fully appear and are in harmony with then existing legislation, especially the Thurman Act, which it did not even purport to alter or amend.

(59). Your petitioner shows that if the Thurman Act is lawful and operative, there cannot be any further steps which, in a legal sense, are necessary to protect and defend any interest of the Government in property already forfeited absolutely to it.

(60. And your petitioner submits that the only liens which the Attorney-General is to foreclose under said Act of March 3rd, 1887, are such as the Government may have acquired and to which it became subrogated as therein contemplated, and such as were imposed in behalf of the United States under the ninth section of the Thurman Act, and which liens rest upon property technically not derived by said Union Pacific Railroad Company directly from the United States, and, therefore, not included in the reverter contemplated in the sixth section of the Act of 1862, or in the eleventh section aforesaid of the Thurman Act.

Your petitioner instances that the only way to extinguish the Union Pacific Railroad Company's interest in the Omaha bridge, and the Kansas Pacific Railway Company's interest in the road from the three hundred and ninety-fourth mile post through to Cheyenne, so that the Government would acquire the same and preserve the continuity and entirety of the road, is either in an

acquisition and a foreclosure of the mortgages which the Government allowed the companies to place upon said properties, or by a foreclosure of the lien in behalf of the United States declared in the Thurman Act as aforesaid; because neither of these properties nor the equity of redemption in them was derived from the United States and would not revert to it for breach of the condition of the sixth section of the Act of 1862 or by forfeiture under the eleventh section of the Thurman Act.

(61). Your petitioner shows that, except as aforesaid, no foreclosure proceedings in behalf of the United States are, in a legal sense, necessary or pertinent to protect and defend the interests of the United States as against the Company; and none whatever to protect the interests of the United States in anything derived by the Company from the United States, and submits that the protection designed to be afforded in said Act is against liability to loss in foreclosure of liens underlying the lien of the Government. These will be presently considered as the principal private obligation of the Union Pacific Railway Company.

SIXTH: OF THE OBLIGATIONS OF SAID BOND-AIDED PACIFIC RAILROAD COMPANIES DUE TO THE GOVERNMENT AS SUCH, AND IN WHICH THE PEOPLE OR ANY OF THEM AS SUCH HAVE NO INTEREST.

(62). This consists simply of the obligation to redeem the subsidy bonds as they mature. It is submitted that the redemption of the bonds would not discharge the companies or the roads from their public and quasi-public servitudes and obligations aforesaid.

PART THIRD.

OF THE PRIVATE INDEBTEDNESS OF SAID PACIFIC RAILROADS, AND MORE ESPECIALLY PERTINENT TO THE RIGHT OF YOUR PETITIONER TO INTERVENE IN THE SECOND OF THE ABOVE-ENTITLED CAUSES.

(63). Your petitioner shows that all the alleged private indebtedness of said Railroad Companies may be classified as follows:

First: The secured indebtedness, consisting of—

(a) First mortgage bonds on the bond-aided roads issued under the Act of July 2, 1864;

(b) Omaha bridge bonds, issued under the Act of February 24, 1871;

(c) First mortgage bonds on the Kansas Pacific Railroad from the three hundred and ninety-fourth mile-post west to Denver, and first mortgage bonds issued on the road from Denver to Cheyenne, both of which issues were authorized under the Act of March 3rd, 1869;

(d) Certain alleged land grant bonds purporting to be secured by mortgages of the lands granted to said companies by the United States and for any mortgage whereof your petitioner is unable to find any authority;

(e) Mortgages and pledges to secure bonds and notes in various trusts, made without any authority of Congress and since said Acts of 1873 and 1878, and which it is submitted were prohibited by said Acts and need not be considered except as several of them appear to have large margins of security, even if the incumbrances are valid;

(f) Guarantees of interest on bonds and dividends on stocks, rentals and the like of other railroad companies, all, as your petitioner is informed and believes, entered into since the Act of 1878 aforesaid, and not in

ordinary course of current business or in good faith and for value;

(g) A current floating indebtedness, not large, incurred in due and ordinary course of business.

Your petitioner shows that the first four classes aforesaid contain all the bonds which, by any possibility, can have any lien on the property of the Union Pacific Railroad Company in priority of the Government's lien.

(64). All the foregoing were issued prior to March 3rd, 1873, on which date an Act of Congress was passed forbidding the Union Pacific Railroad Company from issuing any new stock or making any mortgages or pledges on the property or future earnings of the Company without leave of Congress, except for funding and securing debt then existing or renewals thereof. This disability was not relieved by the consolidation of that Company with the Kansas Pacific Company, even if, after the Thurman Act, that consolidation were lawful.

(65). That the foregoing are also all the mortgages or pledges made prior to the date of said Thurman Act of May 7, 1878, which, in the ninth section thereof declared a lien upon all the property of said Union and Central Pacific Railroads of every description, for the payment of the indebtedness due or to become due to the United States and the payment of the sums required to be paid into the sinking fund, subject only to the provisions that the Act should not be construed as preventing a disposition of the assets in good faith for value in ordinary current business.

(66). Thereupon, in respect of all said private indebtedness, your petitioner submits that in any conflict of interest between the public and quasi-public duties of

the Pacific Railroad Companies and their private obligations, the preservation of the former is of paramount importance.

"The supreme object to be attained," say the Supreme Court (in United States v. Union Pacific Ry. Co., 160 U. S., 1) "was the maintenance and operation of both a railroad and telegraph line from the Missouri River to the Pacific Ocean and governmental aid was extended in order to accomplish a result so important to the whole country."

"We have seen," adds the Court, "that the object of giving governmental aid to the corporations named in the Act of 1862 was to promote the public interest and welfare by the construction and operation of a railroad and telegraph line to the use and benefit of which the Government should be entitled at all times, particularly in times of war, for postal, military, and other purposes."

Even earlier than this and when the United States sought to press its own financial claims and to compel the Company to reimburse the Government for the interest on the subsidy bonds, as the interest matured and was paid by the Government, the Supreme Court in case of The United States v. Union Pacific R. R. Co., 91 U. S., 72, elaborating that such a requirement might cripple the ability of the Company in the performance of its undertaking, said:

"Indeed the whole Act contains unmistakable evidence that if Congress was put to the necessity of accomplishing a great public enterprise through the instrumentality of private corporations, it took care that there should be no misunderstanding about the objects to be accomplished or the motives which influenced its action. If it had been equally explicit in the provisions regarding the bonds to be issued in aid of the road, there would have been no occasion for this suit."

The same Court, when afterwards it sustained the constitutionality of the Thurman Act creating the sinking fund, Union Pacific R. R. Co. v. United States, 99 U. S., 700, said:

"The fund to be created is not so much for the security of the creditors as the ultimate protection of the public and the corporators

* * * It simply gives further assurance of the continued solvency and prosperity of a corporation in which the public are so largely interested."

And, again, in U. S. v. Western Un. Tel. Co., 50 F. R., 42, the Court (Mr. Justice Brewer) say with regard to this point:

"The Government is, it is true, pecuniarily interested as a second mortgagee, but a higher interest is that the administration of its franchises should redound to the general welfare, and not merely to the pecuniary interest of its grantee, or even of itself. The dollar is not always the test of the real interest. It may properly be sacrificed if anything of higher value be thereby attained. But whether the dollar be gained or lost, is not in a matter of this kind a question for the courts. It is for legislative branch, as representative of the popular will, to settle all such questions."

Your petitioner begs leave to show that this is also the understanding of the disinterested Railroad Companies and of Congress and the people. Stuyvesant Fish, President of the Illinois Central Railroad Company, said before the House Committee in February last:

"My endeavor is to put myself as far as I can in the position of the Government. If I stood to-day where the Government stands I would take all the liens on all the bond-aided roads and consolidate them as one thing. That is the best asset the Government has. But the question goes higher. It does not seem to me a question of what the Government can get in money, whether it is $25,000,000 or $45,000,000 or nothing at all. The question is, how can we best carry out the intention of the act of 1862, the act for which those lands were granted and under which those bonds were issued, and in consequence of which railroads were built from the East to the Missouri River—half a dozen of them—and so restore, as best we can, the great broad principle which underlies that act for the benefit of the Government Treasury and the people of the United States in giving them better and cheaper transportation, and putting upon an equal footing all the railroads that reach the Missouri River from the East. You will then have such a volume of business concentrated on the Union Pacific that it will be able to carry freight at a much smaller cost than any other transcontinental line. It will stand somewhat in the position of the Erie Canal and the Great Lakes as a regulator of freights between Chicago and New York. * * * The question I should like to place before the committee, and I have no doubt you have it in your minds, is the importance of taking care of the commercial and shipping interests of that section of the country through which these roads run. There is an opportunity, through reorganization of these roads, perhaps, to stop the waste of capital in building unnecessary parallel lines."

The Senate Committee on Pacific Railroads has by its Chairman, Senator Gear, reported a bill providing for the adjustment of the relations of the road to the United States by a Commission, in which it is said:

"Even if no other considerations existed affecting the subject the Committee would consider an effort at amicable adjustment through and by means of such a commission abundantly justified by the consid-

eration that if a settlement should be made under such a bill there would be secured to all present and future connections of the roads involved the important privileges subject to which any settlement under this act is required to be made, viz., that the companies, if such settlement should be made under the act, and their successors, lessees and assigns should co-operate in making track connections with all railroads of other companies now or hereafter built to points of junction with their bond-aided roads—and that at any point where two or more should connect." Any preference or predjudice for against either should be unlawful. "These privileges could not be acquired as a result of the foreclosure of the paramount mortgage upon the property and the possibility of securing * * * such privileges for all time to come is certainly worth vastly more than an effort to reach" it could cost.

"In any settlement or agreement which might be made with the companies under the authority of Congress, these provisions should be inserted in order to make sure that the roads affected by the settlement were kept open as public highways in the future for the benefit of all present or future railway connections."

In the report of the author of the Commission bill introduced in the House of Representatives in February last with the support of the Committee, it is said:

"If this" (foreclosure) "should occur the most valuable and important part of this great line of railroad across the continent will have passed into other hands without the preservation to the Government of many valuable rights and privileges it now has and which will be retained by it by the passage of this bill."

It does not seem to have occurred to these committees while thus lamenting the loss and deprivation to be sustained in foreclosure either by or against the United States that the Government can be deprived of nothing without its consent and that no bills are necessary to prevent its spoilation of valuable rights and privileges by the Courts without the authority of Congress.

The report of the minority of the same Committee said:

"It should be first noticed that the Attorney-General does not purport to have been guided so much by his duties as the law officer of the Government as he does by his abilities as a trader. His first public announcement of what he had done rested his justification on the guaranteed bid he had secured and the deposit he had obtained. The legal procedure he has instituted as Attorney-General is all ancillary and subordinate to this. But the Attorney-General's authority can not depend upon the price—if he could sell out for $46,000,000, then, equally, he can do so for 46 cents; and his office does not empower him to sell at all.

"But the Attorney-General's procedure in pursuance of the agreement was more in excess of his authority than was the agreement itself-for he did not merely bring foreclosure proceedings in behalf of the Government's lien, but filed his appearance for the United States in the pending foreclosure suit in behalf of the first mortgage bonds, whose holders assert a lien in priority to the lien of the Government, and, as this minority is informed and believes, his bills were actually filed in

this prior foreclosure suit. He does not so much foreclose for the Government as he subjects the Government's interest to foreclosure. For his want of authority to do this, attention is called to a few decisions of the Supreme Court of the United States:

'Without an act of Congress no direct proceedings will lie at the suit of an individual against the United States or its property, and no officer of the Government can waive its privilege in this respect nor lawfully consent that such a suit may be prosecuted so as to bind the Government. (Headnote (in L. Ed.) by Mr. Justice Bradley, who gave the opinion in Carr *v.* United States, 98 U. S., 433.)

'Comptrollers of the Treasurery can not submit the rights of the Government to litigation in any court without some express provision of law. (Case *v.* Terrell, 11 Wall., 199.)

'Claims against and liens upon property of the United States are incapable of enforcement except when such property becomes subject to the control of the court. (The (ship) *Siren v.* United States, 7 Wall., 152.)

'Individuals, as well as courts, must take notice of the extent of authority conferred by law upon a person acting in an official capacity. (Hawkins *v.* United States, 96 U. S., 689; Whitsides *v.* United States, 93 U. S., 247.)

'When the property of the Government is concerned it is proper for the attorney for the United States to intervene by way of suggestion, and in such case if the suit be not stayed altogether the court will adjust its judgment according to the rights declared on the part of the Government thus intervening. (Stanley *v.* Schwalby, 147 U. S., 508, 513 and citations; see also 7 Cranch, 116-147, the leading case.)

'When a State or the Government is a necessary party defendant, the court will decline jurisdiction, and the proceedings will be dismissed. (Cunningham *v.* Railroad Company, 109 U. S., 446-451.)''

It is submitted that the supreme object of the United States in behalf of the Government and the people, in creating this Company and endowing it with fabulous subsidy, cannot be defeated by any private obligations which the Company was allowed to contract, and that the holders of such obligations took them with that understanding. If not, it was sufficiently indicated in the Act of March 3rd, 1873, which declared—

"The laws of the United States providing for proceedings in bankruptcy shall not be held to apply to said corporation."

which were the only proceedings, if any, by which it could be attempted to separate the property from the franchise without making the United States a party.

OF THE FIRST MORTGAGE BONDS ISSUED UNDER AUTHORITY OF SECTION TEN OF THE ACT OF JULY 2, 1864.

(67). Presumably it will not be contended that these bonds could foreclose against and without the consent of the United States, but it may be asserted that the United States have consented, which your petitioner begs leave to consider later.

(68) Your petitioner submits that the first mortgage bonds are not foreclosable under present legislation and especially not against the United States or by foreclosure sale.

That it was not intended they should be, and provision was made which is still sufficient to render it unnecessary, and the Government itself is required to pay them, if necessary, to prevent such foreclosure. The Company is ready, able, and willing, and has offered to pay them if the Government will subordinate its claim to enable the Company to do so. That no mortgage deed was authorized under which foreclosure can be had, but a substitute remedy was afforded.

That especially no such foreclosure is authorized to bar or oust the interests of United States, and no law officer of the Government is authorized to subject those interests to such procedings, and if a foreclosure sale can be had it is not necessary to make the United States a party and bar them, for the property will demonstrably bring more than enough to pay the first mortgage bonds without doing so.

(69). In respect of the foregoing, your petitioner begs leave to point out more in detail as follows:

The Union Pacific was authorized to issue stock for cash at par for the full cost of its road up to one hundred millions, which was more than it cost. That Company and the Kansas Pacific were loaned thirty-three millions of six per cent. Government bonds for thirty years, without paying current interest, and were given outright a

land grant thought to be worth as much as the bonds, and then they were allowed to issue their first mortgage bonds which in some instances, especially in the case of the Sioux City and Pacific Company, were, all of them, distributed as a dividend to the stockholders for nothing.

(70). Your petitioner shows that the resources aforesaid are still ample. There are about sixty-one millions outstanding stock of the consolidated Union Pacific Railway Company, whose constituents received for stock issued not one hundred per cent. of the par thereof in money, as required by the Acts aforesaid, but, as your petitioner is informed and believes, only sixteen per cent. thereof.

That when the Government was advised that the stock had not been paid for, Congress passed the Act of March 3rd, 1873, by which the Attorney-General was directed to bring suit against certain of the stockholders therein described to recover the unpaid stock subscriptions for the benefit of the Company, which he did, and apparently failed to maintain it, only because the proceedings were premature, as the Company at that time was not in default to the United States, and objected to the suit. The United States v. The Union Pacific Railroad Company, 98 U. S., 569.

Such suit is now maintainable, and, in addition to that, the Company is insolvent, and in the hands of receivers, who may be directed by this Court to bring like suits in behalf of creditors, whether the Company consents or not. The unpaid eighty-four per centum on said capital stock of $61,000,000 should yield if collectible nearly twice the amount of said first mortgage bonds.

(71). Your petitioner shows that, for the purpose of protecting and doing complete justice to the first mortgage bondholders of said Union Pacific Railway Company, said Act of July 2nd, 1864, gave to such bonds a

first lien upon the roads, property, and equipment of the companies respectively issuing said bonds, to which the lien of the United States should be subordinated.

(72). That the prior Act of July 1st, 1862, did not contemplate any first mortgage bonds, and under Sectio 6 thereof all compensation for services rendered for the Government was to be applied to the payment of subsidy bonds; but when said first mortgage bonds were authorized, said prior Act was modified by Section 5 of said Act of July 2nd, 1864, so that only one-half of said Goverernment compensation was to be retained by the Government and so applied, whereby relief was afforded to said companies to enable them to meet the interest to accrue on said first mortgage bonds.

(73). That by Section 2 of the Act of 1878 (the Thurman Act), the right of the Government to retain the whole of said compensation was restored, and said companies were required to supplement the same with the payment of certain other sums until the whole should equal twenty-five per centum of the net earnings of said companies respectively; but again, for the relief of said companies, in view of their obligations on first mortgage bonds, it was provided, in Section 2nd of said Thurman Act, that net earnings should not include interest paid on first mortgage bonds, but should be ascertained after deducting such interest.

(74). And further, for the protection of such first mortgage bondholders, Section 5 of said Thurman Act made it the duty of the Secretary of the Treasury to remit so much of all compensation to be retained by the Government, or other moneys to be paid to the Government, by said companies as should be necessary to enable said companies, according to the terms of said Act, to pay interest on its said first mortgage bonds.

It was held by a divided Court in Union Pacific Railroad Co. v. United States, 99 U. S., 402, that the five per cent. of net earnings reserved under the Act of July 1st, 1862, was, by the Act of July 2nd, 1864, subordinated to the payment of interest on the first mortgage bonds.

(75). And finally, in Section 3 of the Thurman Act, a sinking fund was created to be made up in whole or in part of the additional half of compensation for Government services, which said Act allowed the Government to retain, on which fund thus to be accumulated the first mortgage bondholders were, by Section 8 of said Act, given a first lien for the payment of the principal thereof, according to their rights in the premises.

(76). In addition to the foregoing, your petitioner shows that the present value of so much of the sinking fund aforesaid as pertains to the Union Pacific Railway Company, and on which the first mortgage bonds have a first lien, is over seventeen million dollars, which is considerably more than the whole amount of said first mortgage bonds of said company that have as yet matured and, if applied to the payment of such bonds and others as they mature, would cancel all default in respect thereof and leave only about an equal amount outstanding, which said fund, if continued, should also speedily extinguish under the consequent constantly reducing interest charge thereon.

(77). And your petitioner says that a reorganization committee, representing the stockholders of said company, offered in their behalf to committees of the last Congress, as hereinafter mentioned, to pay off the balance of said first mortgage bonds, if the sinking fund could be applied thereto, and if the United States would extend its own claims and reduce the interest thereon,

which your petitioner submits the United States, under its subordinated lien, should do if the United States do not themselves pay off said first mortgage bonds.

(78). By the Act known as the Act of March 3, 1887, the Secretary of the Treasury was authorized to invest the sinking fund in purchases of these same first mortgage bonds, which constituted a lien upon it. The Act further contemplated that if such bonds were outstanding, they might endanger the security of the United States, and that the President should direct the Secretary of the Treasury to purchase and the Attorney-General to take all steps and proceedings needful to redeem the same, which, as hereinbefore shown, included more than first mortgage bonds on bond-subsidized portions of the road, and covered road over which the Government had no lien, except under the Thurman Act, and on which first mortgage bonds, therefore, could foreclose. From all of which it is submitted an intention appears on the part of the United States to protect the lien at least of said first mortgage bonds.

(79). No mortgage deed to secure said bonds was authorized. Your petitioner shows that the Government's lien was created by the Act of July 1st, 1862, and was merely subordinated to the lien of the first mortgage bonds authorized to be issued under the Act of July 2nd, 1864, which Act, as against the United States, is to be strictly construed and did not authorize the making of any mortgages as security for said first mortgage bonds, but made said bonds themselves in the issuance thereof ipso facto liens upon the property, just like the lien of the Government for the subsidy bonds, which was subordinated thereto.

(80). The Act of 1862 in respect of the lien of the Government bonds is as follows:

"The issue of said bonds and delivery to the company shall ipso facto constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds may be issued."

And the amendment of 1864, authorizing the first mortgage bonds, is as follows:

"Sec. 10. AND BE IT FURTHER ENACTED, That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company and any other company authorized to participate in the construction of said road, may, on the completion of each section of said road, as provided in this act and the act to which this act is an amendment, issue their first mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property and equipments."

(81). It is submitted that the word "tenor," when used of the two series of bonds, means that they are to be of contemporaneous issue and to have the same kind of a hold or tenor on the property, and that there was no more right to make a mortgage to secure the first bonds than to require one to secure the seconds.

The Supreme Court in Union Pacific R. R. Co. v. United States, 99 U. S., 402, say:

"It may perhaps be urged that the first mortgage bondholders have no lien on the net earnings, but they have the same lien that the Government has Both liens are co-extensive with the whole property of the company, so far at least as relates to the railroad and telegraph lines and their equipment, and all property appurtenant thereto."

That the word "mortgage" does not imply that any such instrument is to be made; for it is used of both liens in the acts quoted above and in the Act of March 3rd, 1887, and constantly by the Supreme Court in the decisions herein cited.

(82). That it could not have intended that the company was to make a real estate mortgage of the railroad,

appears for several reasons. The Company had no evidence of title in the form of any conveyance to itself. No patents were to issue to the company for the strip of land constituting the location, but only for the lands on each side of it (Act July 1st, 1862, Sect. 4). The right of way was granted as an easement by the Act of 1862.

When the bonds began to issue it was impossible to know for several years where the complete location should be or how much road, and where to end, each company could build. Nothing could be described so as to be identified in a mortgage, at least there was no authority to describe anything in a mortgage. Besides, it was expected that the bonds would be issued in small lots extending over a period of thirteen years, with consequent different dates of maturity, and as was contended in United States v. Union Pacific R. R. Co., 91 U. S., 72, failure to pay each bond constitutes a separate and independent default. Especially was no mortgage authorized which should contain a power of sale, or which, by strict foreclosure, should bar the right of the United States to redeem, or which by any possibility could defeat the purpose of the Government in aiding said road. The companies were allowed to issue the bonds one hundred miles in advance of construction, and the Act contemplated (Sec. 17, Act 1862) that on a failure of the companies to complete the road, the United States should take possession and complete it, which purpose was a part of the security of said bonds and was inconsistent with the foreclosure of any mortgage in their behalf that could prevent such completion, and such mortgage and foreclosure are equally inconsistent with the present right of the United States to take possession of the roads and devote their whole income to putting any part of either of them in repair.

(83). That though the existence of alleged mortgages to secure the first mortgage bonds was noticed in

the preamble of the Thurman Act, yet in the same paragraphs the lien of the bonds was mentioned as limited to the provisions of the acts aforesaid.

(84). That such mortgages, especially if containing any power of sale would be wholly inconsistent with the reverters and forfeitures and other remedies reserved and secured to the United States, and, with the public and private duties imposed upon said company and as conveyances, conditional or otherwise, were ultra vires.

That if any such mortages have been made which do not vary the statutory lien of said bonds, they were wholly unnecessary and not intended; and if they do not vary it, they are wholly unauthorized.

(85). The Act of July 2nd, 1864, gave to said first mortgage bonds no lien on any of the rights, privileges, and franchises of said Union Pacific Railway Company or its predecessors, but only upon the roads, property, and equipment of said companies, which properties are only appurtenant to the franchises. The servitudes imposed upon said properties in behalf of the United States and the public were not subordinated to the lien of said mortgage bonds.

(86). That such mortgages, in the absence of any statutory or contract provisions for the foreclosure, and on a road running through States and Territories which were to become States, all with different railroad and mortgage laws, was more like what is known in England as a mortgage of the "undertaking," and that the security therefor to be of the same tenor as that of the United States requires that, in the event of default in the payment of any of said bonds, the holders thereof should, as a contract right, be entitled to have some trustee or trustees appointed for them by the Court, with the same powers that were conferred upon the Secretary of the

Treasury when there should be default in the payment of the subsidy bonds as set forth in Section 5 of said Act of 1862; that is to say, with power to take possession not only of everything covered by their lien, to-wit, "the respective roads, property, and equipment" of said companies (Sec. 10, Act of 1864), but also "with all the rights, functions, immunities, and appurtenances thereunto belonging." (Sec. 5, Act 1862). Not otherwise, it is submitted, can the mortgaged property be operated for the benefit of said first mortgage bondholders and the lien of the United States completely subordinated to the prior lien of the same tenor. And such trustee, so to be appointed, should be required to operate said road just as the present receivers are now doing, and to devote the whole income to the payment of the interest as it accrues and to the principal as it matures on each of said first mortgage bonds not paid by the sinking fund. And the right of the United States to forfeiture, foreclosure, or reverter, or to retain compensation for services, or any part of the earnings, should be subordinated thereto. Such remedy as this,—the right to its full earning capacity, is all that any creditor or owner can get out of any quasi-public corporation which the public has a right to have operated, and especially is it all that the safety and declared purposes of the Government can permit to any mortgagee or creditor of this road.

(87). But your petitioner submits that, even if the lien of said first mortgage bonds may be enforced against the companies by strict foreclosure, such proceedings could not bar the United States. Presumably every taker of the bonds was aware of the law as a fact that the United States cannot be sued, nor can their properties be attacked by judicial proceedings without their express consent by act of Congress; and, as herein elsewhere shown, no law officer of the Government can sub-

ject its property to such proceedings without like authority. If the first mortgage bondholders have a right, they have no remedy, and the court cannot give to them a remedy against the Government.

(88). Your petitioner further shows that it would not be necessary to make the United States a party and bar it in order to have the sale yield more than sufficient to pay the first mortgage bonds, for that nearly all of said bonds are held or controlled by a Reorganization Committee, hereinafter mentioned, which has also assembled substantially all the stock of said company, and, as your petitioner is informed and believes, has instituted or caused to be instituted or has adopted foreclosure proceedings pending in this Court in behalf of the lien securing said bonds, and has agreed with the Attorney-General to bid about forty-six millions for the lien of the United States on said Union Pacific Railway and sinking fund in any foreclosure sale in said proceedings, so that a great value in said property above the lien of the first mortgage bonds demonstrably exists and from which it is necessarily inferred that, in any foreclosure sale in behalf of the first mortgage bonds, an amount far in excess of the sum required to pay any balance of first mortgage bonds would be realized without making the United States a party or cutting off its interest. The purchase price would be almost inevitably the amount of said first mortgage bonds and would be paid in a surrender and cancellation thereof; it would not be much if anything more, since the surplus would go to the United States, whose right to redeem would not be cut off and it would not be much, if anything, less, for fear that the Government might redeem from the purchaser without paying the balance of the bonds. This would release the sinking fund to the United States.

(89). The rights of the United States as such would then be only the powers, coupled with an interest, hereinbefore set forth, and the right to redeem. The purchaser would be secure; he could only be disturbed by the repayment of his money with six per cent. interest, and, in the meantime, would enjoy the whole use and income of the property, subject only to the powers coupled with interests aforesaid and the rights of the public therein as they have heretofore existed, and as it was designed they should be perpetuated.

(90). So well understood does this appear to be that the defaulted first mortgage bonds continue to be worth about par on the market, in so far as there are any for sale, and the Reorganization Committee aforesaid is glad to secure a continued payment of the interest upon such as are submitted to their control; and in their scheme of reorganization they propose that such bonds shall carry a large premium in new securities, while the stock of said company, though subject to an assessment, has a substantial market value because of the expectation that an interest, representative thereof, in the form of new stocks, will survive all anticipated foreclosures whatsoever.

(91). Wherefore, in all and singular the foregoing, your petitioner submits that no foreclosure sale in behalf of said first mortgage bonds is lawful or necessary; and that especially is there no authority in law and no necessity for making the United States a party to proceedings therefor.

Your petitioner asks but little consideration of the remaining private obligations of the Company as above classified. The petitioner finds no authority for the

making of the land grant mortgages, and they seem to be inconsistent with the reverter secured to the United States and to the rights which the public were to have to enter upon all said lands which should not be disposed of within three years, at substantially Government rates or prices. The objection to the making of any such mortgage before the location of the road was determined and the length of it, and what lands therefore should appertain to the respective companies, forbade any mortgage until the roads should be completed, and it was not contemplated that this would be accomplished in less than thirteen years, while at the end of three years the lands were to be open to entry as aforesaid, and were subject to forfeiture and reverter if the road should not be completed by the Company.

(92). It is submitted that the idea of a mortgage on the land is almost as inconsistent with the dominant idea of the whole enterprise as any specific mortgage on the railroad to secure the first mortgage bonds would be. But in this connection, your petitioner begs leave to call attention to an important fact, that the consolidated mortgage covering the Kansas Pacific road from the 394th mile-post west by way of Denver to Cheyenne appears to be also secured by substantially all the outstanding bonds on the Denver Extension and the Cheyenne Division and by substantially all of the Income Bonds on the Eastern and Middle Division of the Kansas Pacific. The Income Bonds, though unauthorized by any express legislation, were yet prior in date to the prohibitory act against further issues of bonds of March 3rd, 1873, and the Consolidated Mortgage, though subsequent to that Act, was made by the Kansas Pacific Company which was not included in said prohibitory act.

In 1878 the Thurman Act was passed, which practically forbade the Company from incurring liability, except for value, in good faith, and the ordinary course of current business; and the consolidation of the Union and Kansas Pacific, if lawful at all, did not take place till 1880, and presumably the Union Pacific did not assume any obligations of the Kansas Pacific by such consolidation.

(93). But in the worst aspect, and assuming that the Kansas Pacific could mortgage its lands under the consolidated mortgage, the estimated value of that land is nearly sufficient to pay the outstanding bonds, of about eleven millions, thereby secured, and thereby to release for cancellation the first mortgage on the Denver Extension and Cheyenne Division, and all the Income Bonds too for cancellation, thus preserving the entirety and continuity of the road as contemplated without imposing any further burdensome charge upon the Government in assuming said bonds.

(94). The authorized Omaha bridge bonds outstanding are not considerable. Besides, several of the collateral trusts of the company, to which, even if lawful, the lien of the Thurman Act should attach, afford margins of value for discharging the indebtedness secured.

(95). The remaining floating indebtedness to be noticed is divisible into two classes: One represents guarantees of dividends on stocks and interest on bonds of other railroads to an amount which it is said is the sole cause of the bankruptcy and insolvency of the Union Pacific Company, and, it is claimed, necessitates a foreclosure and a wiping out of the present Company to avoid these liabilities. The answer to which, your petitioner

submits, is that all such undertakings are in direct violation of the restrictions imposed by the Thurman Act, and are presumably utterly void. Such obligations, therefore, of the Union Pacific Railway Company offer no reason nor necessity for any foreclosure or other extinction of that Company.

(96). The remaining floating debt, unsecured, incurred in lawful course of current business, is not large. It has no legal protection, since it will be wiped out without recompense in any forfeiture or foreclosure. Its payment, therefore, may be postponed, but it is entitled to consideration more than are the stockholders in reorganization schemes to be had in pursuance of foreclosure.

PART FOUR.

OF THE RIGHTS OF THE UNION PACIFIC RAILWAY COMPANY ESPECIALLY PERTINENT TO YOUR PETITIONER'S RIGHT TO INTERVENE IN THE THIRD OF THE ABOVE ENTITLED SUITS.

(97). Your petitioner shows that said Union Pacific Railway Company, its constituents and predecessors, were endowed with certain peculiar and inalienable privileges and immunities to enable it to perform its obligations to the United States and to the public, as hereinbefore set forth.

(98). Your petitioner submits that said Company, having accepted the acts of Congress aforesaid, undertook to perform the duties thereby imposed upon it, and that it should protect and defend its ability to do so and that under said act known as that of March 3rd, 1873, as construed by the Supreme Court of the United States in the case of Union Pacific Railroad Company v. Hall,

91 U. S., 343, your petitioner is entitled to the writ of mandamus from this Court to compel said Union Pacific Railroad Company to operate its said railroad as required by law, which your petitioner submits requires said Company to defend according to its rights against foreclosure in the above entitled suits, to the end that your petitioner's rights and interests therein as hereinbefore set forth may be preserved.

(99). But your petitioner further says that nearly all of the stock of said corporation has been assembled by the Reorganization Committee aforesaid, which Committee has also assembled nearly all the first mortgage bonds for the purpose, among others and as hereinafter charged, of instituting or causing to be instituted foreclosure proceedings in behalf of said first mortgage bonds, and in which all junior liens and interests shall be wiped out and all the floating debts and contracts, all the duties to the United States and to the public, and all the rights and immunities of said company; and that in pursuance thereof there shall be a reorganization in which all the properties of said Union Pacific Railway Company shall be vested in a new corporation, freed from all obligations hereinbefore set forth, pertaining to said Union Pacific Railway Company, and in which new corporation the owners of the stock of the present company so assembled by said Committee shall have new stock.

(100). That said Committee have thus and otherwise, as your petitioner is informed and believes, acquired control of said Union Pacific Railway Company, its officers and directorate, whereby said company is made to cooperate in the purposes of said Reorganization Committee, and to that end abandon all defence of its rights, privileges, franchises, and immunities in the premises.

(101). Wherefore, as well as because of your petitioner's rights to the writ of mandamus, your petitioner

as standing herein to make defence for said company or to compel said company to make defence for itself of its rights, powers, properties, and immunities so that it may perform its duties aforesaid and that the interests of your petitioner may be protected.

(102). Your petitioner submits that the faith of the United States is pledged to the Union Pacific Railway Company and to the public neither themselves to foreclose by sale, nor to permit any foreclosure and extinction of that Company by or in behalf of first mortgage bonds.

(103). Your petitioner submits that under a comprehensive construction of the Acts of Congress hereinbefore referred to, the United States occupy a twofold relation to said Pacific Railroad Companies which were created and aided as aforesaid; one in which, as sovereign, the Government holds in trust the obligations of said Companies to perform and to maintain their ability to perform their duties to the public as well as to the United States, and the other relation in which the United States are simply a contract creditor.

(104). The constitutionality of the Thurman Act, which took vast sums of money from this Company for sinking fund purposes, was put upon the following grounds in the opinion of the Supreme Court in Union Pacific R. R. Co. v. U. S., 99 U. S., 700:

"The United States occupy towards this Corporation a twofold relation: that of sovereign and that of creditor. U. S. v. R. R. Co. (ante-143.

"Out of regard to the rights of the subsequent lienholders and stockholders, it is not only their right, but their duty, as sovereign to see to it that the current stockholders do not, in the administration of the affairs of the Corporation, appropriate to their own use that which in equity belongs to others.

"The fund to be created is not so much for the security of the creditors as the ultimate protection of the public and the corporators.

"To our minds it is a matter of no consequence that the Secretary of the Treasury is made the sinking fund agent and the Treasury of the

United States the depository, or that the investment is to be made in the public funds of the United States.

"Neither is it a fatal objection that the half of the earnings for services rendered the Government, which by the Act of 1864 was to be paid to the Companies, is put into this fund. The Government is not released from the payment. While the money is retained, it is only that it may be put into the fund, which, although kept in the Treasury, is owned by the Company.

"It simply gives further assurance of the continued solvency and prosperity of a corporation in which the public are so largely interested, and adds another guaranty to the permanent and lasting value of its vast amount of securities."

(105). That Act took the moneys which belonged to the Railroad Company and withheld the moneys due from the United States to the Railroad Company, and invested them at high premiums in securities of the United States, bearing a low rate of interest, which were continually shrinking as they approached maturity; and thus in the end the Act bankrupts the Union Pacific in the payment of its first mortgage bonds; for the fund is more than sufficient to pay every first mortgage bond that has matured; and that if the Government had credited the Company with the same interest on the fund which the Government was charging the Company on its own bonds, and the same rate the Company was paying on its first mortgage bonds, the fund should be about sufficient to pay all of the latter bonds as they mature. It is submitted that the United States cannot refuse to pay the bonds while that money lasts, nor can its officers conspire with the first mortgage bondholders in a foreclosure for the non-payment.

(106). In addition to that, the Thurman Act created out of whole cloth a lien upon all of the property of the Union Pacific Railroad of every description and from whatever source derived, and then declared the road a bankrupt and published the law that nobody should trust it except in due course of current business.

(107). Before that, by the Act of March 3rd, 1873, the United States forbade the Company from issuing any more stock, though it was not nearly up to its authorized limit and never has been; and also forbade it from issuing any new securities whatever, except in renewal of existing obligations. Under these conditions, bankruptcy would seem to be inevitable however much money the Company might earn or however much its property enhance in value.

It has been a common thing for the United States from time to time to direct the withholding of other moneys due from the Departments to the railroad companies, and of imposing onerous duties upon the companies without compensation, and directing the companies to sue if they objected. (See Act March 3, 1875. Act of April 30, 1878.)

(108). Your petitioner submits that it is manifest that the Government desired to avoid the construction or operation of the roads as a governmental foreclosure, but did desire to have them constructed and operated for use of the Government, especially in time of war, and to promote the public welfare at all times by agencies over which the Government should retain complete control.

(109). In addition to the foregoing acts of sovereign protection, your petitioner begs leave to cite that the Government has appointed meetings of the stockholders of the Union Pacific and ordered them to elect directors (Act of April 10, 1869.) It has appointed boards of eminent citizens to examine the condition of the road and compelled the companies to pay ten dollars a day to each member. It has authorized the Attorney-General to demand and receive security from the Union Pacific Company for the building of its road, and for the same purpose has required the President to withhold the sub-

sidy bonds to which the companies were entitled (same Act.) It has authorized the Secretary of the Treasury to examine the book records and correspondence, and all other documents of the Union Pacific Company, at will. (Act of March 3, 1873.) It has expressly legislated the Company and its creditors outside of the pale and remedies of the bankrupt law and forbade the Company to pay dividends (same Act). It has created new offices like that of Auditor of Railroad Accounts (Act June 19, 1878), afterwards called Commissioner of Railroads, to exercise a supervision over said Railroad Company, and to require from it further reports and statements of its conditions and operations. It has directed investigations to see if the Company has committed penal offences or become subject to punishment and forfeiture (Act of April 12th, 1869.) It has released it from building telegraph lines as a matter of contract, and has imposed such building without consideration under its reserved sovereign powers in behalf of the Government and the people (United States v. Union Pacific R. R. Co., 160 U. S. 1). It has enacted special criminal legislation applicable only to the directors, officers, and agents of these companies to prevent the use by the companies of their own funds, and to compel them to perform the special duties, secured to the public, and has imposed punitive damages upon the Company for violation (Thurman Act, Sec. 6, Act of June 20, 1874). And it has given to every citizen of the Republic, whether he has any interest or not (Union Pacific R. R. Co. v Hall, 91 U S, 343), a right to a writ of mandamus in any Federal Court having jurisdiction to compel the Company to operate its road as required by law (Act March 3d, 1873), and from the beginning it reserved to itself the power of life and death over the Company to secure the road to itself in time of war and to promote the public welfare.

(110). Your petitioner begs leave to incorporate, as statement herein, and to show that there cannot be a sale of said railroads to companies or to men who are under no special obligation to the Government or the people, the decision of the Supreme Court in the recent case of—

United States v. Union Pacific Ry. Co., 160 U. S., 1.

"In our judgment, it is not difficult to ascertain the intention of Congress in passing the acts of July 1, 1862, and the amendatory act of July 2, 1864, Chap. 216. The supreme object to be attained was the maintenance and operation of both a railroad and telegraph line from the Missouri River to the Pacific Ocean, and governmental aid was extended in order to accomplish a result so important to the whole country."

(After epitomizing the first 18 sections) "These and other provisions are wholly inconsistent with the idea that the Union Pacific Railroad Company could have fulfilled its obligations to the government by simply constructing a railroad, without making any provision whatever for the construction, maintenance or operation of a telegraph line, thereby leaving all communication by telegraph along its route to the absolute control of private corporations deriving no corporate authority from the national government, and whose operations would not ordinarily be subjected to national supervision."

"We have seen that the object of giving governmental aid to the corporations named in the act of 1862 was to promote the public interest and welfare by the construction and operation of a railroad and telegraph line, to the use and benefit of which the government should be entitled at all times, particularly in the time of war, for postal, military and other purposes.

"In this view it must be held that by its reservation of authority to add to, alter, amend or repeal the act in question, whenever it choose so to do, Congress, subject to the limitation that rights actually vested or transactions fully consummated could not be disturbed, intended to keep within its control the entire subject of railroad and telegraphic communication between the Missouri river and the Pacific ocean, through the agency of corporations created by it, or that had accepted the bounty of the Government. It was never intended that the railroad companies accepting such bounties should be able, by any contract or arrangement with telegraph companies, to discharge themselves, for all time and beyond the authority of Congress otherwise to provide, from the obligation to exercise, by their officers and agents exclusively, the telegraphic franchises received by them from the national government

"It was suggested in argument that the objects of the acts of 1862 could be fully accomplished by means of a telegraph company incorporated by one of the States, and which, by placing its lines on the route of the railroad, could meet all the demands, as well of the railroad company as of the government and the general public. But this suggestion can have no weight in the present inquiry. For if, as intimated, the execution of the act of 1888 will result in no real good to the general public, and may even be injurious to the pecuniary interests which the government has in the Union Pacific Railway and its branches, that is a ques-

tion of public policy, with which the judiciary is not concerned, and the responsibility for which is with another branch of the government."

"We perceive no escape from the conclusion that it is entirely competent for Congress to add to, alter, or amend the acts of 1862 and 1864, so as to require the Union Pacific Railway Company, possessing the rights and powers of its constituent companies to maintain and operate, by and through its own officers and employees, telegraph lines for railroad, governmental, commercial, and other purposes, and to exercise, itself and alone, all the telegraph franchises conferred upon it. It is enjoying the bounty of the government subject to the condition, among others, that it will perform these duties whenever so required by Congress.

"The purposes of the 4th section of the Idaho act is quite apparent. Its effect was, as we have heretofore said, to relieve each of the railroad companies named in the act of 1862 from any present obligation to construct a telegraph line on its roadway, by means of an 'arrangement' with the United States Telegraph Company for the construction of such a line. But no arrangement could be legally made under that act which tended in any degree to defeat the great objects of the acts of 1862, and the act amendatory thereof, of July 2, 1864, Chap. 216. The act of 1862 did not authorize the railroad company to agree that it would not itself, at some future time, construct and operate a telegraph line for the use of the government and the people. Nor did it, by terms or implication, repeal or modify the clause in that act by which Congress expressly reserved the power to add to, alter, amend, or repeal, the latter act, having due regard to the rights of the railway companies named in it. Certainly it could never be held that a due regard to the rights of either the railroad company or of any corporation claiming under it required that the government, charged by the Constitution with the duty of regulating interstate commerce, should permit the railroad company receiving national aid to invest a corporation, not deriving its authority from the United States, with the exclusive right to enjoy its roadway—a national highway—for purposes of telegraphic communication between the States."

(111). Your petitioner shows that there are apparently but two places in all the legislation of Congress touching the premises, in which it is contemplated that any other companies than those herein referred to might come into possession of said road.

(112). In the last part of the 15th Section of the Act of July 1st, 1862, already hereinbefore quoted as the principal enactment on which this petitioner relies for standing, it is said:—

"Wherever the word Company is used in this act, it shall be construed to embrace the words, their associates, successors, and assigns, the same as if the words had been properly added thereto."

(113). These words in a conveyance to a quasi-public corporation simply limit the estate but do not authorize

a transfer of it. Except this, and as stated in the next section which authorizes the consolidation of any two or more of the companies mentioned in the Act, successors and assigns are not contemplated in the Act. It is submitted that while such consolidation is the only succession authorized (and there can be none without the authority of the creating sovereign), it is also the only succession contemplated. Otherwise, by the express terms of the Act, the successor would have to assume not only all the public and quasi-public duties, but the first mortgage bond and subsidy indebtedness to the United States too, which pertained to and bankrupted its predecessor.

(114). The other place is Section 6 of the Act of June 19th, 1878, which created the office of Auditor of Railroad Accounts, and required the bond-aided roads to make reports to him, and said:

"This act shall apply to any and all persons or corporations into whose hands either of said railroads may lawfully come, as well as to the original companies."

which it is submitted was limited to the only "lawful" succession then authorized, that arising from consolidations between the companies themselves.

(115). Your petitioner begs leave to emphasize that there are but three possible or authorized destinies for this road under the law as it exists which can secure "the supreme objects to be attained" in its creation, and they embrace all the right to succession with which the sovereign creator of the Union Pacific Company endowed it.

First: Its own perpetual existence;

Second: Consolidation with any of the other bond-aided roads that were subject to like duties; and

Third: Forfeiture to the United States.

(116). These are all that, according to the title of the Act can "secure to the Government * * * for postal and military purposes * * * a railroad * * *

from the Missouri River to the Pacific Ocean," and according to the Act that "the whole line * * shall be operated * * so far as the public and government are concerned * * * as one connected continuous line," and always subject to this:—

"And the better to accomplish the objects of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend or repeal this act." Sec. 18, Act July 1, 1862.

(117). Your petitioner shows that forfeiture to the United States, even if insisted upon, would not be so hard upon and disastrous to the companies as foreclosure sales and said bond-aided companies are or should be equally interested in opposing any sale in the premises. By existing laws, the Secretary of the Treasury is empowered upon certain conditions to compromise any claims due to the United States.

Rev. Stat. U. S., Sec. 3469.

And very likely would be glad to do so but without relieving the companies of their public and quasi-public duties which were the supreme objects to be attained in their creation.

By still other laws, the Solicitor of the Treasury has charge of all lands or other property which may come into the possession of the United States for the payment of debts.

And when real estate becomes the property of the United States in payment of debt, and the debt is afterwards paid, the Solicitor of the Treasury may release said real estate to the debtor, which would probably apply to the payment of a compromise sum.

Rev. Stat. United States, Sections 3750-3751.

These provisions constitute a valuable right and interest to said Pacific Railroad Companies, which should not be taken away or impaired by foreclosure.

(118). Your petitioner begs leave to call the attention of the court to the fact that the period of the receivership herein has been the most depressing and disastrous to railroad enterprise and business of any that has been known, and that there is strong reason for believing that, with a return to normal times and business, said Union Pacific Railway Company, under careful management, can discharge all of its just obligations.

(119). Wherefore, for all and singular the foregoing, your petitioner submits that not a single interest in the premises appears whose just rights cannot be better served by a discharge of these procedings and a recommitment of the properties involved to said Union Pacific Railway Company under such prudent safeguards and supervision as this Court may see fit to impose, until the sinking fund aforesaid shall, if ever, be insufficient to meet said first mortgage bonds as they mature, or until the United States may take possession under its rights aforesaid, than by wrecking said company in any proceedings of sale in foreclosure; and that the design and effect of any such sale is and will be the sacrifice to a greater or less extent of every other interest involved, both public and private, for the inordinate benefit and enhancement in reorganization of certain selected securities held or controlled by a volunteer Reorganization Committee, formed, as your petitioner is informed and believes, to realize unmerited gains out of the loss and distress to be sustained and borne by the United States and the public and by private interests not taken care of in such contemplated proceedings.

PART FIFTH.

THE COMPLAINT.

(120). Your petitioner, relying upon its rights and interests and the rights, powers, and interests of the

United States and the Congress thereof and the powers and duties of the President and other officers of the United States and the rights and duties of the Union Pacific Railway Company, its constituents and predecessors in the premises, and showing that any foreclosure except by and in behalf of the United States, and that all foreclosure sales of said railroad would be in derogation thereof, repugnant thereto, and unauthorized, says and complains:—

(121). That said Union Pacific Railroad Company received subsidy bonds under the acts aforesaid to the amount of $27,236,512 in the par value thereof, and issued its first mortgage bonds to the amount in the par value thereof of $27,229,000, and purported to make a mortgage to secure the same to one Edwin D. Morgan and one Oakes Ames, as trustees, both of whom, since deceased, have been succeeded in said alleged trust by one F. Godron Dexter and one Oliver Ames, Second, and by which alleged mortgage said Union Pacific Railroad Company purports to have conveyed to said trustees, as your petitioner is informed and believes, all and singular its said railroad and telegraph line and all its real and personal estate, franchises, and property then owned or thereafter to be acquired by said railroad company, all on condition that for six months' default said trustees may take and operate said railroad on the request of a majority of the defaulted bonds and for one year's default may sell all of said mortgaged premises at auction on the request of a majority and for the payment of all said outstanding bonds regardless as to whether all shall have matured or not. But said mortgage does not purport to authorize any foreclosure by judicial proceeding against the United States or anybody else and does not purport to warrant any bar, but expressly preserves the right of redemption upon the payment at any time of the indebtedness thereby secured.

(122). And your petitioner says that the predecessors of said Kansas Pacific Railway Company received subsidy bonds under the acts aforesaid to the amount in the par value thereof of $6,303,000, and as your petitioner is informed and believes that one Henry M. Alexander and one John F. Dillon claim to be mortgage trustees under one mortgage, and said Dillon and one John A. Stewart claim to be mortgage trustees under another mortgage made by the predecessors of said Kansas Pacific Railway Company to secure an issue of alleged first mortgage bonds of said predecessors to the amount in the par value thereof of $6,303,000 and the above-named trustees claim, as your petitioner is informed and believes, that said alleged mortgages constitute liens upon the same property covered by, and that they are prior to, the lien of said $6,303,000 subsidy bonds aforesaid; that Russell Sage and George J. Gould claim to be trustees under another mortgage dated May 1st, 1879, which purports to be secured by certain lands and, among others, by substantially all the first mortgage bonds (not in sinking funds) on the Kansas Pacific road from the 394th mile post west by way of Denver to Cheyenne.

(123). That afterwards and after said Union Pacific Railway Company and the properties thereof had been put into the hands of receivers, as hereinbefore set forth, a certain association was formed under the name of the Reorganization Committee of the Union Pacific Railway Company, composed of Louis Fitzgerald (chairman), Jacob H. Schiff, and Chauncey M. Depew, all, as your petitioner is informed and believes, of the city, county and State of New York and citizens of said State, T. Jefferson Coolidge, Jr., and Oliver Ames, second, both, as your petitioner is informed and believes, of Boston, Massachusetts, and citizens of said Commonwealth, and Marvin Hughitt, a citizen, as your petitioner is informed and

believes, of the State of Illinois, and a resident of Chicago in said State.

(124). That the purpose of said Committee was to induce the holders, except the United States, of the various kinds of bonds, except the subsidy bonds, secured upon the main stem of the Union Pacific Railway Company, including the Kansas Pacific Line, "to combine," regardless of whether their respective holdings had matured or were in default or not, and especially so to induce "first mortgage bondholders" so "to combine for an enforcement of their prior lien."

(125). And to that end said Committee represented that the lien of the United States on the easterly end of the main line began at Omaha, and of the Kansas City line at Kansas City (exclusive of the Kansas City, Missouri terminals) that the United States had no lien on the Kansas City line west of the three hundred and ninety-fourth mile post, nor on the Leavenworth branch, so-called, nor on the Cheyenne division.

That eminent counsel had advised that the lien of the first mortgage bondholders might be effectively foreclosed, and that while it was desirable to make a settlement with the United States and to continue efforts in that direction, further delay on the part of the first mortgage bondholders in protecting themselves by securing their legal rights, would be likely to become dangerous and to result in loss.

That they, said Committee, "have been asked by large interests to formulate and proceed with a reorganization which shall at once secure to the holders of the first mortgage and other bonds requiring consideration in reorganization, a full return in new securities of the successor company with fixed charges based upon the lowest results from the operation of the main line and

the Kansas Pacific and Denver Pacific lines, which have been obtained during the times of the greatest depression."

(126). That said Committee had formulated a plan which it was believed "fully carries this purpose into effect."

That under said plan said Committee "proposed through such foreclosure proceedings as the Committee shall cause to be instituted or shall adopt, or through such other means as the Committee shall determine, that a new company shall succeed to (or that the present company reorganized upon the basis of indebtedness fixed in this plan shall retain) the main lines and lands covered by the mortgages included in the plan."

That under said plan the new Company shall issue the following securities:—

First Mortgage Railway and Land Grant,	
Fifty-year four per cent. Gold Bonds,	$100,000,000
Four per cent. preferred stock,	75,000,000
Common stock,	61,000,000
Total,	$236,000,000

(127). Your petitioner shows that the whole amount of bonded indebtedness, except that due to the United States, taken into account in the capitalization and bond issue proposed, amounts to only about fifty-five millions of dollars.

That if the entire indebtedness due to the United States, both principal and interest, and the entire capital stock, too, were also taken and added to the bonded indebtedness included as aforesaid, the whole amount of all thereof would fall some sixty millions short of the enormous issues of securities contemplated in said plan,

the greater part of which excess is, by said plan, allotted in bonuses to mortgage bondholders other than the United States to induce them to come into said plan, and to said Reorganization Committee and its associate syndicate, as hereinafter mentioned, as compensation for alleged anticipated services.

(128). That the whole provision which said plan purports to make for the payment of the lien indebtedness due to the United States, which, if reduced by the application thereto of the sinking fund, hereinbefore mentioned, would amount to about fifty-five millions, was thirty-five millions in said proposed first mortgage bonds and twenty millions in said preferred stock; and that by the agreement hereinafter set forth, said sum is reduced to a possible minimum of less than thirty millions in cash. Whereby, if bonds may be sold for money with which to pay the same, the whole amount of public and private bonded indebtedness taken into account by said Reorganization Committee need not exceed ninety millions.of dollars, and which embrace substantially all the value to be represented by said proposed issue of two hundred and thirty-six millions of stocks and bonds on said property.

(129). That, therefore, by said plan, a foundation will be laid for the contention that rates of fare charged for the service of said railroads, which Congress now has a right to reduce, when such rates exceed ten per centum of the cost of said road, may be imposed upon your petitioner desiring to connect with and upon the public generally using said roads, so as to yield a return to all these enormously watered, alleged representations of value; and all in derogation, as your petitioner is informed and

believes, of constitutional prohibitions of the State of Nebraska, in which the main stem of said line principally lies.

(130). That, further, to induce said first mortgage bondholders to come into said scheme, said Committee purported to enter into the following arrangement with a certain banking firm doing business under the firm name and style of Kuhn, Loeb & Co.:

"Through arrangements made with the Syndicate hereafter mentioned, the following cash provisions are made in respect to default and future interest on present first mortgage bonds of the Union Pacific and Kansas Pacific Railway Companies, as shown in detail below.

"First: The coupons now in default upon present first mortgage bonds are to be purchased in cash for account of the syndicate at the time of the deposit with the Committee of the bonds to which they pertain.

"Second: Coupons maturing on deposited first mortgage bonds in the interval between the deposit thereof under the plan and the date from which bonds of the new company are to bear interest (Jan. 1st, 1897) are to be purchased by the syndicate from the Committee, which, in turn, shall apply the amounts so received at the respective due dates of the coupons to the payment of corresponding installments on its outstanding certificates applicable to such deposited bonds. * * * The proportion of the current semi-annual interest installments which shall have accrued on January 1st, 1897, on such of said bonds as do not bear January coupons, shall be likewise provided for in cash at the time of the delivery of the new bonds."

That—

"During the pendency of the plan and when it shall be declared operative, the depositor, under the Reorganization Agreement, of a $1,000 bond of either of the following classes:

Union Pacific,
Kansas Pacific, Eastern Division,
Kansas Pacific, Middle Division,
Kansas Pacific, Denver Extension,
} First Sixes,

will receive:—

"1st. Cash for all defaulted coupons on the date of deposit.

"2d. A certificate entitling the holder to compound interest upon the same when allowed by the Court.

"3d. Cash for all maturing coupons on the respective dates of their maturity to the date from which the new bonds will commence to draw interest.

"4th. Six per cent. to January 1, 1897, on bonds maturing in 1895 and 1896, payable semi-annually.

"5th. Cash for the rate difference of 2 per cent. between the old and the new bonds, on bonds maturing subsequently to January 1, 1897, from January 1, 1897, to the date of maturity of the old bond.

"6th. $1,000 in a new 50-year first mortgage gold bond bearing 4 per cent. interest from January 1, 1897.

"7th. $500 face value in preferred shares of the new corporation.

* * * * * * * * * *

"Upon any just and conservative valuation which may be placed upon the new first mortgage bonds and the new Preferred Stock offered in exchange for the principal of the present first mortgage bonds, these new securities will be found to merit such market price as to make the exchange clearly desirable from the standpoint of realization value."

(131) On the other hand, and to enable said Reorganization Committee to acquire power and control over said Union Pacific Railway Company in aid of its purposes aforesaid, the stockholders therein were induced to surrender their stock to said Committee and to pay an assessment of fifteen dollars per share on their stock to aid said Committee in its purposes by representation as follows:

"The common stock of the present company will be assessed $15 per share Shareholders paying the assessment of $15 will receive the amount of the assessment (viz., $15 per share) in new preferred stock at par, and will also receive par of their present common stock in common stock of the new company.

"Shareholders who do not pay their assessments as called will forfeit their rights. The stock assessment will be underwritten before the plan is declared operative.

"The proceeds of the assessment will be applicable to the cash requirements of this plan as herein provided, and to such requirements as shall be fixed and determined by the Committee, including such expenses and charges as it shall make or incur in the premises; and suitable compensation to the members of the Committee."

(132) Both bondholders and stockholders were required to act on the respective inducements held out to each promptly on the representation that—

"The time for the deposit of bonds receivable under this plan and of the shares of stock of the present company is limited to December 31st, 1895, after which no bonds will be admitted except upon the payment of a penalty of five per cent.

"The Committee moreover may at any time decline to receive further deposits of securities, and should, under any settlement with the United States Government, a foreclosure under the first mortgage alone become requisite, first mortgage bondholders who have not deposited may suffer material detriment and forfeit important advantages. * * *

"Upon shares of stock deposited after the time above limited (December 31, 1895), the assessment will be at the rate of $20 per share. After the expiration of the limit of time, the penalty of $5 per share will be payable at the time of the deposit and will not be refunded."

And that—

"Holders of securities not deposited in the manner herein provided within the time so fixed, limited, extended or renewed, will not be entitled

to deposit the same or become parties to this agreement or share in the benefits thereof, and shall acquire no rights thereunder except by express consent of the Committee, and on such terms and conditions as the Committee may prescribe."

(133) And in respect of said reorganization syndicate, said Committee represented to said security holders:

"A Reorganization Syndicate has been organized under the management of Messrs. Kuhn, Loeb & Company, bankers, to furnish the sum of ten million dollars for the following purpose:

"1. To purchase all the interest coupons on first mortgage bonds now in default.

"2. To purchase, as they shall mature hereafter, the interest coupons on first mortgage and also the semi-annual assignments of interest accruing on bonds already matured during the pendency of the plan and until it shall become operative.

"3. To purchase, if it shall be found advisable for the promotion of the reorganization, any outstanding first mortgage bonds and Omaha Bridge bonds, and to deposit the same under this plan, and if it shall be found advisable to purchase all or any defaulted or future maturing coupons or interest assignments on Omaha Bridge bonds.

* * * * * * *

"Such steps shall be taken in respect of all purchased coupons and interest assignments as will secure a valid claim for cumulative interest in favor of the Reorganization Syndicate.

"The right is reserved in behalf of the Committee, with the assent of the bankers, to call for an increase of the amount required to be advanced by the Syndicate to fifteen million dollars.

"The Syndicate is to advance a sum not exceeding $100,000 for expenses, repayable with interest at six per cent. interest after the plan shall have been declared operative. All advances made by the Syndicate shall be repayable in gold.

"Six million dollars of preferred stock are to be turned over as compensation to the syndicate, of which the bankers are to retain one million as their own compensation."

(134). Your petitioner says that the plan of said Reorganization Committee, as aforesaid, was printed and was widely advertised, to the end that it might come to the notice of security holders; and that, annexed to the plan, was a draft of an agreement which all depositors of securities were to sign, which provided that said Reorganization Committee should have such transfer assignments and powers of attorney as should enable said Committee to vest the title in all such securities in themselves.

Your petitioner craves leave to refer to said plan and agreement at the hearing.

(135). And your petitioner, upon information and belief, says that nearly all of the bonds of the kinds embraced in said plan of reorganization, and nearly all of the stock of said Union Pacific Railway Company, have been deposited subject to the control of said Committee, as required by said plan.

And your petitioner, on allegation of information and belief, submits that the purpose of said plan and agreement is manifestly, upon the face thereof, to wreck and destroy said Union Pacific Railway Company, together with all the stock interests therein and many of the junior securities thereof, also all ability on the part of said company to fulfill the purposes for which it was created and aided by the United States, or to perform its duties to the United States and the public and localities and to your petitioner and other interests, as hereinbefore set forth, and all value in and sources of payment for any balance of its indebtedness to the United States, and all unsecured indebtedness, and so that another company which said Reorganization Committee may form or cause to be formed shall succeed to all its properties, including its said railroad and telegraph lines freed from the obligations and servitudes which pertain to said existing company and the properties thereof, as hereinbefore set forth.

(136). And in like manner submits that said plan and agreement are usurious and champertous and disclose a purpose of maintenance, especially in behalf of said first mortgage bondholders.

All to be accomplished by confederacy between said Committee and the members thereof and said Syndicate, wherein is also expressly disclosed a purpose to achieve important advantages for the security-holders who come in under their

plan, whereby and in comparison with which other holders of like securities will suffer material detriment.

(137). And your petitioner, on allegation in like manner of information and belief, submits that said plan and agreement, taken in connection with the action of said Reorganization Committee under and in pursuance thereof, also constitute a confederacy or conspiracy offensive to the United States and the people thereof, and in derogation of and detrimental to their power and interests.

(138). Thus your petitioner, on information and belief, alleges that said Reorganization Committee assembled said bonds and stocks under advice, belief or pretence and representation that it would thereby acquire rights and powers against the United States, which, in the absence of any compromise with the United States, it would exercise all as follows:

That the lien of the first mortgage bonds covered other property, railroad, terminal, bridge and equipment not included in the subsidy lien of the Government. That the first mortgage bondholders might foreclose the Government out of its interests in the property, just as they might foreclose individuals. That the Government is in the position of any other creditor. That notice could be given to the United States, and, if they failed to resort to their right of redemption, the legal effect would be an estoppel. That the Reorganization Committee would have all the power they needed to foreclose, and that no legislation on that point was necessary. That such proceedings should result in foreclosure sale at which the Reorganization Committee would probably be the purchasers, or a committee designated by it as purchasing trustee.

That in such sale the franchise of the company would be sold, and the right of the United States to keep and maintain

directors in that corporation would be extinquished, as well as any obligation of that character. And that the right of the United States to the transportation of its soldiers, munitions of war, and mails would become a common law obligation of the road after it had gone into private hands, like the right of the United States with reference to any road; and that a syndicate of aliens could, under the general rule, become the purchaser of the property including its franchises.

(139). In this connection, and in connection with the fact that the Reorganization Committee contemplated becoming the purchasers for the benefit of the depositors of the securities, your petitioner calls attention to the fact that three of the five depositories of securities are established in, and three of the five places in which publication is to be made of notices required under the plan are, London, Amsterdam, and Frankfort-on-Main.

(140). Your petitioner further, on information and belief, says that said Reorganization Committee itself was of opinion that there was absolutely no occasion for foreclosure, except as against the United States, and if that matter could be settled; yet, being advised that the right way to bring a suit for the securities they represented was in the name of the trustee of the mortgage, such suits were brought before said Reorganization Committee sought any legislation from Congress, and are now pending, for the effective sale of the property free from all equities or redemption in the United States named therein, and a monition was served upon the Government notifying it of the pendency of the proceedings.

(141). Afterwards, as your petitioner is informed and believes, said Reorganization Committee addressed a statement to the Chairman of the Committee of the Senate of the United States on Pacific Railroads, expressing that the

Committee's view was that the Government could be foreclosed and that no outstanding right of redemption would be left open, but that the Committee would consider it better to agree with the Government on some just and equitable solution of the matter. And thereupon said Reorganization Committee appeared, by its representatives, before the Committees on Pacific Railroads for the Senate and the House of Representatives of the United States.

(142). And said Committees of the Senate and House formulated and reported to both said branches of Congress a proposed act, called the Funding Bill, for the release by the United States of its interests in said railroad, in accordance with proposition and terms proposed to said Congressional Committees by said Reorganization Committee, which bills were strenuously opposed by your petitioner because they made no substantial provision for the protection and preservation of the public and private rights and privileges in the premises, in which your petitioner is interested as aforesaid (except for a preferential use of said railroad for reasonable compensation by the Government), and because the Reorganization Committee's representatives opposed an amendment to said bill, which should protect your petitioner's said rights and interests.

(143). And said bill and the propositions thereof were, by a very large majority of the vote, utterly defeated and rejected in the House of Representatives on the eleventh day of January last past, and a motion to recommit was held under advisement by the Speaker of the House until the twelfth; and a few days thereafterwards a bill for the adjustment of the Government's interests in said railroads was introduced into the Senate by the Senate Committee on Pacific Railroads, and a like bill was shortly afterwards reported to the House by the Committee thereof; which bill,

as reported to the Senate, is there pending and is the first on its calendar, the passage whereof for the purpose, among others, of avoiding any threatened foreclosure proceedings in the premises, was urged by said Senate Committee in a report made to the Senate on the eighth of the present month, to which report your petitioner asks leave to refer.

(144). In the meantime and after the alleged or attempted services of notice or monition upon the United States in said prior foreclosure suits brought in behalf of the first mortgage bondholders, the Attorney-General steadfastly kept the Government out of said suit, though his special assistant in the matter had a good deal of conference with counsel for the Reorganization Committee, and the Attorney-General was advised of their contentions and that an attempt would be made to enforce the Government's appearance in the foreclosure suits with a view of giving a complete title to the purchaser in the foreclosure sale.

(145). That also, in the meantime, the Reorganization Committee, through counsel, urged upon the Attorney-General that the Government could be made party to a suit in which said Committee would oust the rights and interests of the United States if it failed to acquire them under the Funding Bill, until the Attorney-General, who, while believing that the appearance of the Government could not be compelled, was nevertheless pursuaded that in the threatened foreclosures a difficult problem was presented by the Government's ownership of a subordinate security upon property whose value he thought was generally believed to be insufficient to pay in full any but said first mortgage; and thought that, unless the Funding Bill was passed, the Government should endeavor to secure terms for its appearance in court in the way of an assurance of such a bid on the property, in

case of a judicial sale, as would secure it a fair realization of the value of its lien.

(146). That immediately upon the defeat of said Funding Bill, and in the midst of the activity of Congress aforesaid in the matter, the Attorney-General, in pursuance of his opinions outlined as aforesaid, was induced ostensibly to invite overtures from said Reorganization Committee to subject the interests of the United States in the premises to a judicial auction sale, and purported to enter into an agreement with said Reorganization Committee whereby, in consideration of a promised bid of less than forty-six million dollars to be made by or in behalf of said Committee, he agreed that the Government "shall at once take proceedings in the pending foreclosure suit," meaning the suit wherein foreclosure is sought of the lien of the first mortgage bonds, which, it is alleged, underlies the lien of the United States in the premises, "or by independent bills for the foreclosure of its" (the Government's) "lien upon the railroad and property of the Union Pacific Railway (which includes the Kansas Pacific line) by sale thereof, and for the sale of the sinking fund in the hands of the Secretary of the Treasury relating to the Union Pacific Railway Company. * * * * The sale of the sinking fund to be judicial or otherwise."

Said alleged agreement purports to be in the form of a correspondence, copy whereof, with a statement in respect of the same, the Attorney General furnished to the Senate in a communication addressed to the President of the Senate in response to a resolution of inquiry, a copy of which communication is hereto annexed and made a part hereof.

(147). And that in pursuance of the agreement and arrangement aforesaid, and to carry out the same, the Attorney-General filed his said original bill in behalf of the United States in the first of the above entitled causes, and

purported to enter or to cause to be entered an appearance and answer in behalf of the United States in the prior foreclosure suits aforesaid, being the second of the above entitled causes, with the intention that contemporaneous foreclosure sales should be made in both said proceedings. And your petitioner begs leave to refer to both of said bills, the pleadings therein, and records thereof, here on file for the purpose among others of showing that both contemplate a sale of said Union Pacific Railway and all statutory rights and claims of the United States, and the franchises embraced in the premises free and discharged of all claims of the United States or of said defendant Union Pacific Railway Company, and without regard to or any protection of the rights of the public or any member thereof in the premises.

(148) All and singular the foregoing acts of the Attorney-General were, as your petitioner is informed and believes, done at the request and in pursuance of the purposes of the combinations of interests effected by and in furtherance of the understanding, purpose, and interest of said Reorganization Committee and the members thereof and said Kuhn, Loeb & Company, and their associates, as hereinbefore mentioned and otherwise.

(149) And your petitioner submits, on information and belief, that the taking of its railroad from said Union Pacific Railway Company and the vesting thereof in a new corporation in the manner and with the effect contemplated by said Reorganization Committee would and are designed to impair or destroy the rights, powers, and interests of the United States and the public now secured as aforesaid, as not applicable to said new corporation, as follows:

To preserve the right of your petitioner and others in like situation to build railroads to connect with said Union Pacific Railroad at such places and on such just and equit-

able terms as the President of the United States may prescribe.

To require said Union Pacific Railway Co. to have and retain the roads and equipment essential to the performance of its duties, both to the United States and every part thereof and to the people, and to operate said road as now required by law and subject to existing rights of Congress to reduce the rates of fare thereon.

To have said road subjected to all the servitudes imposed upon it for the benefit of the Government or the public, especially including herein subjection to an effective exercise of the statutory rights and powers now secured to the United States and to the people, as hereinbefore set forth.

To add to, alter, amend, and repeal the Act of July 1st, 1862, aforesaid, "the better to accomplish the objects" of the said Act, "namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (but especially in time of war) the use and benefit of the same for postal, military and other purposes."

To enact special legislation in behalf of the United States' own interests in respect of said road, as the United States may now do, both of sovereign right and under said Act of 1862.

To prevent, especially in time of war, any alien or hostile interests from acquiring, operating, or destroying said road as the private property of such interests.

To require that said road and the branches thereof, and the Central Pacific Railroad in connection therewith, be kept in repair and in working order, and to take the income of all said roads to repair any part of either.

To have supervision over and knowledge of and a voice and vote to determine the purpose of the directorate of said Company, by representation of the Government on said Board.

To require reports concerning said road to be made to the Commissioner of Railroads of the United States or to any other officer or bureau of the Government.

To have the books, records, correspondence, and all other documents of said Company open at all times to the inspection of the Secretary of the Treasury or such persons as he may designate.

To secure that "the whole line of said railroad and branches" (including the Central, Union and Kansas Pacific Roads), "shall be operated and used for all purposes of communication, travel and transportation, so far as the public and the Government are concerned, as one connected, continuous line."

And other reciprocal obligations imposed upon said bond-aided railroads by Section Fifteen of the Act of July 2, 1864. Any refusal to comply with which requirement now constitutes, as provided in the Act of June 20th, 1874, a penal offense against the United States, punishable by imprisonment and also by punitive damages to any of the public aggrieved by such refusal.

To prevent the payment of any dividends to the stockholders of said Company except out of net earnings, which to do was forbidden generally by the Act of March 3d, 1873, and which payments, if made, when the requirements of the Thurman Act are not complied with, are in the sixth section of said Act made a penal offense against the United States, punishable by imprisonment.

To prevent the creating of any mortgage or pledge upon the property or earnings of said Company, without leave of Congress, except for the purpose of funding and securing

debt existing on March 3d, 1873, or renewals, which to do is now, as provided in the Act of Congress of said date, a penal offense against the United States.

To have the rates of fare on said railroad reduced by Congress, if unreasonable, when they exceed ten per centum of the cost of said road.

To secure a right of other railroads to connect with said Union Pacific Railroad on such just and equitable terms and at such places as the President may prescribe.

And other like rights and immunities for the benefit of the United States, the various sections thereof, and the public and private interests affected or involved.

(150). And your petitioner says that counsel of said Reorganization Committee is also of counsel in the foreclosure proceedings of the second of the above entitled suits, and of Russell Sage and George J. Gould in their proceedings to foreclose the consolidated mortgage aforesaid, and that the co-operation of interests to effect a foreclosure against the United States was so apparent in the examination of one of the Receivers before the United States Senate Committee, that a senator conducting said examination (Senator Brice) declared:

"It is apparent from what examination has been had, that on the threshold of this whole matter there is a cloud on the action of the Receivers, and of the Trustees, and Counsel, and on the whole fabric. It is true (and I think you should explain to the Committee) that there is practically but one mind in charge of all the various phases of the case, and that the divisions and partitions between them are merely technical—I mean between the Mortgage Trustees and the Counsel."

(151). And your petitioner, upon information and belief as to the construction to be put upon the acts and doings of the Reorganization Committee and the organization thereof and of its associates and beneficiaries, submits that they constitute and effect a combination, both unlawful in itself since, among other reasons, it is champertous and

embraces maintenance as above submitted, and unlawful in its purposes since they offend against the United States as aforesaid.

(152). Your petitioner, on information and belief, says that said Reorganization Committee make various pretenses in the premises, as follows:

That it has a lawful and enforcible contract with and against the United States by virtue of its correspondence with the Attorney-General aforesaid, and the deposit made by it, or, if not, then that it should not itself be bound and may withdraw said deposit for want of consideration.

That under the provisions of the Act of March 3rd, 1887, aforesaid, and under the direction of the President, the Attorney-General had authority to enter into said agreement and can carry it out.

That said agreement is necessary and in time pressing for the relief and payment of first mortgage bondholders.

That otherwise and by virtue of his office, the Attorney-General could enter into said agreement and carry out the same in the lawful exercise of his official duties.

That his authority includes the power to sell the sinking fund in the hands of the Treasurer of the United States.

That said agreement does not usurp functions more appropriately pertaining to the Secretary of the Treasury or to Congress.

That said agreement is in its provisions wise, fair, and equitable for and not unconscionable toward the United States.

That your petitioner and others of like interests and the public have no standing herein to oppose.

That the Court can do full justice and equity to all interests concerned.

(153). But your petitioner, on information and belief, charges to the contrary of all and singular the foregoing

pretenses as hereinbefore set forth, and further, on information and belief, says that the truth and fact thereof are as follows:

That said alleged agreement between the Attorney-General and said Reorganization Committee is not a lawful and enforcible contract against any or either party, and neither that nor said alleged deposit of $4,500,000 therein mentioned afford any security to the United States that said agreement would be observed or performed before this or any other Court having jurisdiction, or otherwise or elsewhere, none of said Committee being a party to any of said suits, nor are they or any of them or said deposit within or subject to the jurisdiction of this Court.

(154). The Act of March 3rd, 1887, by the true construction thereof, as hereinbefore shown, contemplates the acquisition by the United States and subrogation to and foreclosure of any forcloseable mortgages which the United States had expressly authorized to be placed upon parts of said property; also foreclosure of the lien declared to the United States in the Thurman Act so far as any such lien was necessary to cover property not derived from and which, therefore, on forfeiture, would not revert to the United States.

Beyond this, it is submitted the Act would become obsolete as a remedy in behalf of the United States and superseded by the operation of the forfeiture acts in six months after any default.

Further than this, it is apparent that the Act affords no justification to the Attorney-General for his action or the direction of the President thereto, since the Act is, by its terms, to be invoked only when, in the opinion of the President, it shall be necessary to avail of it for the protection of the security and interests of the United States as against prior liens lawfully liable to be enforced, in which event it is the duty of the President to direct the payment of such prior liens.

(155). It is not pretended or averred that the President entertained any such opinion of necessity, or that any such necessity did, in fact, exist, but to the contrary thereof the Attorney-General's bills show that it did not exist for they declare that the Attorney-General had not entered the appearance of the United States in the prior foreclosure suits, and his published report shows that his refusal so to do was, in his opinion, a perfect protection to the United States as against such suit.

(156) It is further submitted there are no foreclosure statutes or common law of the United States to regulate the matter, and in the absence of such the only foreclosure contemplated in said Act when operative is strict foreclosure and not foreclosure sale.

That this is especially true when, as in this case, the defendant is not in possession and if in default its titles and franchises have reverted to and vested in the United States for breach of condition and forfeiture. The Government cannot foreclose against itself and there is nobody else to respond.

Your petitioner has hereinbefore shown that said agreement was not necessary for the relief of the first mortgage bondholders while the sinking fund on which they constitute a first charge is larger than the amount of such bonds that have matured, and that it is good equity that they exhaust that special security before ousting or competing with other or junior creditors for participation in a common security or general asset of an insolvent.

That the Attorney-General had no authority to make the agreement by virtue of his office or in the exerise of any duties imposed upon him as a law officer of the Government. On its face it is apparent that the transaction was not of such intendment as may be relegated to the Department of Justice, but was in substance and truth a bargain

or compromise to the support of which the exercise of the Attorney-General's official functions in conducting litigation is subordinate and perfunctory.

That especially he could not agree to any sale or disposition of the sinking fund which by emphatic decision of the Supreme Court belongs to the Union Pacific Railway Company (99 U. S., 700), and the United States holds it subject to a prior lien and trust in behalf of first mortgage bondholders.

(157). The agreement, it is submitted, is a usurpation by the Executive Department of the functions of Congress, which tribunal was dealing with the matter when the foreclosure bills were filed, which bills, it is submitted, must either take the matter out of the hands of Congress or be stayed or dismissed.

Your petitioner submits that if Congress has the right to legislate in the premises, neither the Executive nor Judicial Departments of the Government can terminate the right without the consent of Congress. To show the pending action of Congress in conflict with the pending proceedings herein, as well as to support many of your petitioner's claims herein, and to show the unwisdom of any foreclosure sale in any of the above entitled actions, your petitioner begs leave to again refer to a report recently (April 8th, 1897) made to the Senate of the United States by the Committee thereof on Pacific Railroads.

While the refunding bill aforesaid was properly before Congress and was under debate, your petitioner procured a proposed amendment thereto to be presented and read, designed to protect certain of the rights and interests of your petitioner in the premises, as hereinbefore set forth, which amendment said Reorganization Committee, by representatives of the interests thereof, opposed, and said Committee of the House, having said proposed act in charge, rejected said amendment, which rejection, as your petitioner is in-

formed and believes, largely contributed to the defeat of said bill; and your petitioner says that said bill was, in the main, supported by the representatives of States whose people were financially interested, and was, for the most part, opposed and defeated by the votes of representatives of States whose people were largely dependent upon the operations and connections of said road and the service to the public to be thereby secured; and that, immediately following said defeat, other bills were in preparation and to be introduced more in accordance with the seeming views and purposes of the majority than the defeated bill had been, when the foreclosure proceedings herein were instituted by the Attorney-General. And your petitioner shows that these and other like differences between the private interests involved seeking a compromise, and the public interests to be affected by the disposition of the railroads aforesaid, can be more appropriately contested and determined in Congress, where all the people are represented, than by the courts.

(158). The agreement and arrangement is unwise for and unconscionable toward the United States.

Your petitioner shows that the amount of cash required for completing the purchase at such sale is so enormous that preparation to meet the same by more than one or two parties practically forbids competition, and that such improvident forced sale would presumably discharge all persons collaterally or remotely liable for the payment of said indebtedness to the United States, or liable to contribute to any fund which should be available therefor, especially including stockholders in said Union Pacific Railway Company, its constituents and predecessors to pay up unpaid subscriptions to the stock of said companies.

Such sale would subject to the risk of a cash bid of forty-six millions all the security the Government has for a claim of about seventy millions, thus imposing a probable loss of about twenty-five millions on this property alone, and a

possibility of large liability to first mortgage bondholders for selling the sinking fund on which such first mortgage bondholders assert a first lien, and especially that such sale would seemingly be inevitably ruinous of the value of a similar lien of the United States for about sixty millions now maturing upon the Central Pacific Railroad, for which road, in the event of the sale herein contemplated, there would be no connection or outlet to the East in or over which the United States would have any interest or control.

In the report of the Senate Committee on April 8th, 1897, it is said:

"It is confidently believed by the committee that a result can be reached through and by means of a commission which will be much more advantageous to the interests of the United States than could be reasonably anticipated by, or as the result of, a suit for the foreclosure of the Government's lien, which, as has been stated, would undoubtedly necessitate the foreclosure of the paramount lien securing the first-mortgage bonds."

In the report of the majority of the House Committee of February 11, 1897, it is said as follows:

"Again, it is thought by many, and strong grounds to sustain it that a better price can be obtained for the Union Pacific and Central Pacific railroads, if sold jointly, than can be if sold separately. It would be prudent at least to make a test of this, which can only be done by having some proper tribunal to represent the Government."

And in the report of the minority of that Committee:

"Besides, there are more lawsuits than property to be sold, and until these can be determined, nobody would dare to bid save this reorganization committee that controls the junior and contesting interests."

"But the great loss will fall on the sale of a similar lien which the Government has for about sixty millions on the Central Pacific. The Union Pacific is the only eastern connection of the Central Pacific, in or over which the Government has any interest or control, and when that is gone, the Government's second mortgage on a road running from San Jose to 5 miles west of Ogden would be of but little, if any, value. Everybody now understands this, and the most eminent experts in the country say it would not be merely a blunder but a crime to sell the two roads separately."

And we beg leave to refer to perhaps as good expert testimony as can be found in the country, in our quotation from the statements of Stuyvesant Fish before the House Committee as hereinbefore stated.

The agreement fixes the price first, and the Attorney General's bill provides for finding out what is to be sold afterwards. There are the widest possible differences of

11914
141

opinion among lawyers and others of special and expert knowledge in the premises as to the nature and extent of the Government's liens aforesaid, and what, if any, are the underlying liens, or what they cover; and equally wide differences as to what the assets of the Union Pacific Railway Company are, and what of them are subject to the Government liens or available to the payment of the indebtedness so secured. These differences, none of which have been judicially ascertained, measured in money, amount to very many millions of dollars, among which is the question as to whether the Government's lien covers the Omaha and Council Bluffs terminals and the bridge between the same, which has been a subject of constant debate in Congress, the doubt and gravity of which have been stated to Congress by the receivers of said property, and which question is generally thought to involve an interest of the value of ten million of dollars; also a question as to whether the income of the Union Pacific Railway Company invested in new and branch lines while that Company has been, by anticipation and as shown in the Thurman Act insolvent, can be followed, which question is estimated to involve between twenty and thirty millions; also the question as to whether the lien declared in the ninth section of the Thurman Act is constitutional, which is pertinent to determine whether the Government's lien covers land and securities in one trust to the nominal value of more than ten millions, and in another trust of nearly one hundred millions, and other large properties, and if so, what the order or priority of such liens may be.

That there is a further question as to whether the roads can be sold free from the servitudes imposed upon the same by existing laws in behalf of the Government and public, including the conflicting contentions as to the right of the Government to retain in priority of the interests of any first mortgages all compensation for services to the Government, until the indebtedness for the aid to said roads furnished by the Government shall be fully paid, which compensation

now amounts to about fifteen hundred thousand dollars per year, and could be indefinitely perpetuated to that extent and retained by the Government, if the road should be sold so as to leave a deficit in the indebtedness to the amount contemplated in the guaranteed bid aforesaid. That other complications and great, like and unlike, uncertainties as to what constitutes the securities to the Government and its interest therein exist and concerning which a former Attorney-General, Mr. Olney, filed a paper in the first of the above-entitled suits, to which your petitioner craves leave to refer; all of which matters, it is submitted, should be ascertained and determined before there should be any offers of sale whatsoever.

(159) As to the two remaining pretences, your petitioner submits that if it is not entitled to standing herein, as is said in one of said pretences, then the Court does not have all parties in interest before it so as to do full justice as is said in the other.

Wherefore and forasmuch as your petitioner is without other relief in the premises:—

To the end that your petitioner's right to build a railroad to and to connect with the railroad of said Union Pacific Railway at such point and on such just and equitable terms as may be by law prescribed;

And that said terms may include in behalf of Sioux City and the Middle Northwest a reciprocal exchange of business and co-operation with the road and branches of said Union Pacific Railway, without adverse discrimination against the road of your petitioner or in behalf of said road of the Union Pacific Railway Company or any other branches or connections thereof; and that the rates of fare on said Union Pacific Railway Company may continue to be within the control of Congress and subject to reduction when unreasonable; and that such railroad, together with its branches and connections,

may be operated as a connected continuous line; and that in the first of the above-entitled cases the remedies of the United States, against the properties of said Union Pacific Railway Company for default, may be confined to forfeiture and reverter of all rights, privileges, franchises, and grants derived from the United States, and strict foreclosure of all liens of the United States upon all and any other properties of said Company;

And that there may be no enforcement of the indebtedness due from said Company to the United States in any foreclosure proceedings which shall impair the rights of your petitioner as aforesaid, and other public and quasi-public obligations of said Union Pacific Railway Company; and that in the second of the above-entitled causes there may be no foreclosure or foreclosure sale which shall impair the rights of your petitioner as aforesaid, but that the holders of said first mortgage bonds which have matured shall be required first to exhaust their remedies against the sinking fund held by the United States before resorting to foreclosure, while said Company is not in default except by the neglect of the United States to apply said fund as aforesaid to the payment of said bonds as they mature; and that in both the above-entitled suits the receivers may be directed to enforce the liabilities of certain of the stockholders for unpaid subscriptions, to the end that the creditors of said Company may be paid with the proceeds thereof;

And that in the third and all the above-entitled suits said defendant Union Pacific Railway Company may be required to defend and maintain its rights and immunities in the premises so that it may perform its duties and observe its obligations to the United States and the public, especially to your petitioner, as hereinbefore set forth; and that upon its failure or neglect to do so your petitioner may be admitted so to defend in the name and behalf of said Company;

And that the members of said Reorganization Committee of the Union Pacific Railway, hereinafter named, may be made parties defendant to this petition in each of the above-entitled causes, and that the first of said causes may be held to have been unauthorized, and dismissed, and the second premature and misconceived as to the remedy prayed for, and that the complainants in the first of said causes and the members of said Reorganization Committee and said defendant Union Pacific Railway may be required to answer this petition, but not under oath, and that they and each of them and their officers and agents may be enjoined and restrained from further prosecuting or participating in or promoting any foreclosure sale of the railroad or other property of said Union Pacific Railway Company or reorganization of said Company, and that no such sale may be had; and

In the alternative, but protesting against any such sale, that suitable provision may be made, in the decrees and orders therefor in all said cases, to preserve the right of your petitioner to build its railroad to and to connect the same with the road of said Union Pacific Railway Company at such place and on such just and equitable terms as may be therein prescribed, which shall include a right to connect therewith as a part thereof and to a fair reciprocal exchange of freight and traffic and co-operation with the road and branches of said Union Pacific Railway Company so as to form a part with it and its connection, the Central Pacific Railroad, of a continuous connected line from Sioux City aforesaid to the Pacific Ocean, all without adverse discrimination of any kind against the road of your petitioner or in behalf of said road of the Union Pacific Railway Company, or any other branch or connection thereof;

And that, should any judicial sale be found to be authorized and necessary in the premises, a master may be appointed to formulate and report to the Court a plan

for the same, which shall be protective of all interests concerned, especially those of your petitioner as hereinbefore set forth, and on terms which shall bring the purchase of the property to be sold reasonably within the means and resources of competitive and more than one or a few bidders;

And that your petitioner may be admitted a party hereto for the protection of its own rights and interests, as well as those of others in like situation with itself, who may choose to come in and be made parties hereto, and those of the public, as all or any of said rights or interests arise out of or rest upon any duties or servitudes undertaken or imposed upon said Union Pacific Railway Company, its constituents and predecessors, and its and their railroads and the operations thereof not due strictly to the Government as such and to make suggestion of all such duties and servitudes, due to the Government and the public, in which your petitioner and those in like situation with itself and the public have any interest;

And that your petitioner may have such other and further relief as the nature of the case may require and to your Honors may seem meet;

May it please your Honors to admit your petitioner as a party in each of the above-entitled causes, with full standing, to protect and defend all and singular the rights and interests herein asserted by your petitioner, and the rights or duties of others not otherwise protected or defended in said causes, on which the interests of your petitioner depend, with right to notice and to be heard on all matters touching the same, and to appeal and review, and to all other remedies and reliefs necessary, proper, or convenient in the premises, and that an order may be issued to be addressed to said Reorganization Committee and the members thereof, to-wit: Said Louis Fitzgerald, Jacob H. Shiff, and Chauncey M. Depew, all of the city, county and State of New York, and

T. Jefferson Coolidge, Jr. and Oliver Ames, 2nd, both of Boston, in the Commonwealth of Massachusetts, and Marvin Hughitt, of Chicago, in the State of Illinois, restraining them from further pursuing or seeking to pursue or enforce said alleged agreement between said Committee and the Attorney-General of the United States, to-wit, the agreement expressed in the communication hereto annexed; and a subpoena requiring said Committee and the members thereof aforesaid and said defendant the Union Pacific Railway Company to appear and answer all and singular the premises, in each of said suits, but not under oath, the benefit of answer under oath being hereby waived, and an order that all other parties to any of the above-entitled causes wherein this intervention is sought who may have or assert any interest in the matters of this petition to-wit:

Russell Sage and George J. Gould, both of No. 71 Broadway in the City of New York, as Trustees under a certain alleged mortgage known as the Consolidated Mortgage of the Kansas Pacific Railway Company, and also as Trustees under an alleged first mortgage upon the Cheyenne Branch, so-called, of the Union Pacific Railway Company, who appear by their Solicitor (among others), Winslow S. Pierce, of No. 195 Broadway in said City of New York.

John F. Dillon, of No. 195 Broadway, and Henry M. Alexander, of No. 120 Broadway, both in said City of New York, as Trustees under an alleged first mortgage of the Eastern Division of the Kansas Pacific Railway Company, and who appear by their Solicitor, Charles C. Deming, of No. 120 Broadway of said City of New York.

John A. Stewart, of No. 45 Wall Street, and the said John F. Dillon, of No. 195 Broadway, both in the City of New York, Trustees under an alleged first mortgage on the Middle Division, so-called, of the Kansas Pacific Railway Company, who appear by their Solicitor, Ed-

ward W. Sheldon, of No. 45 Wall Street, in said City of New York.

The said John A. Stewart, whose address is as aforesaid, and William Endicott, Jr., the latter, as your petitioner is informed, of Boston in the Commonwealth of Massachusetts, as Trustees under an alleged first mortgage of the Denver Extension, so-called, of the Kansas Pacific Railway Company, who appear by their Solicitor, the said Edward W. Sheldon, whose address is as aforesaid.

The Mercantile Trust Company, of No. 120 Broadway in said City of New York, Trustee under an alleged mortgage called the Kansas Division and Collateral Mortgage of the Union Pacific Railway Company, asserting, among other things, a first lien on the equipment of said Company, which appears by its Solicitors, Alexander & Green, and W. W. Green, all of No. 120 Broadway of said City of New York.

The Union Trust Company as Trustee under an alleged first mortgage upon the lands of said Union Pacific Railroad Company, which appears by its Solicitor, Wheeler H. Peckham, all of No. 80 Broadway, in said City of New York.

J. Pierpont Morgan, of said New York City, at the corner of Wall and Broad Streets therein, and Edward F. Atkins, of said Boston, as your petitioner is informed and believes, as Trustees under an alleged first mortgage on the Omaha Bridge, who appear by their Solicitors, Seward, Guthrie, Morawetz & Steele, of No. 31 Nassua Street, in the City of New York, and also by Wharton & Baird, of Omaha, in the State of Nebraska, in the New York Life Building therein.

The Central Trust Company, as Trustee under an alleged renewal mortgage, so-called, on said Omaha Bridge, which appears by its Solicitors, Butler, Stillman & Hubbard, and Adrian H. Joline, all of No. 54 Wall Street in said City of New York.

The Receivers of said Union Pacific Railway Company, a citizen and resident of the State of Missouri; S. H. H. Clark, of St. Louis, in the State of Missouri; Oliver W. Mink, of the Ames Building, in Boston, in the Commonwealth of Massachusetts; E. Ellery Anderson, of No. 27 Williams Street, and Frederic R. Coudert, of No. 100 Broadway, both in the said City of New York; and John W. Doane, of No. 45 Wabash Avenue in the City of Chicago, in the State of Illinois; and the collective address of all of whom as Receivers as aforesaid is No. 27 Williams Street in the said City of New York, and Ames Building, in the said Boston, who appear by their Solicitor, W. R. Kelly, of the Union Pacific Building, in the City of Omaha, in the State of Nebraska.

And said defendant, the Union Pacific Railway Company, has a principal place of business in said Boston, and in the said Omaha, in the State of Nebraska, and which appears by its Solicitor, said W. R. Kelly, whose address is as aforesaid.

And said Oliver Ames, Second, of the Ames Building, in the said Boston, and Samuel Carr, Executors, etc., the latter also of said building and city, in the care of J. H. Benton, Jr., Complainants in the third of the above-entitled suits, who appear by (among others) Harwood & Ames, of the City of Lincoln, in the State of Nebraska.

And the Complainants in the second of the above-entitled suits, said F. Gordon Dexter and said Oliver Ames, Second, both of said Boston, the address of the latter of whom is as aforesaid, who appear by their Solicitor, said Winslow S. Pierce, whose address is as aforesaid.

And in the first of the above-entitled suits, the United States appear by their Attorney-General, Joseph McKenna, of the City of Washington, District of Columbia, by their former Attorney-General, Judson Harmon, of the City of Cincinnati, in the State of Ohio, George

Hoadly, Special Assistant to the Attorney-General, of No. 22 Williams Street in the said City of New York, and John C. Cowin, Special Counsel for the United States, of the Ware Block, on the corner of 15th and Farnam Streets in said Omaha.

Louis Fitzgerald, of No. 120 Broadway; Jacob Schiff, of 27 Pine Street, and Chauncey M. Depew, of the Grand Central Station, all in the said City of New York; Marvin Hughitt, of No. 22 Fifth Avenue, in the City of Chicago, in the State of Illinois; T. Jefferson Coolidge, Jr., and Oliver Ames, Second, both of the Ames Building, in the said Boston; and all of whom are all of the members of the Reorganization Committee, hereinbefore mentioned, and whose collective address in such capacity is No. 120 Broadway, in the care of Alvin W. Krech, Secretary.

Kuhn, Loeb & Company, of No. 27 Pine Street, in the said City of New York, who have formed the Reorganization Syndicate hereinbefore mentioned.

Collis P. Huntington, of the said City of New York, the Vice-President of the Central Pacific Railroad Company.

be required by order of notice to be served upon said parties or their solicitors in such manner as the Court may direct to answer the premises, but not under oath, within a day therein to be limited; and to stand to and abide by such other and further orders, judgments, and decrees in the premises as to your Honors shall seem meet.

CREDITS COMMUTATION CO.,
Of Sioux City, Iowa,
By Its Solicitors,
JOHN C. COOMBS,
HENRY J. TAYLOR.

Of Counsel,
John C. Coombs,
25 Equitable Building,
Boston, Mass.
Henry J. Taylor,
Sioux City, Iowa.

STATE OF IOWA, }
COUNTY OF WOODBURY, } ss.

April 27, 1897.

I, Henry J. Taylor, having been duly sworn, state I am solicitor and of counsel for the foregoing petitioner Credits Commutation Company in the matter of said petition, that I have read the petition and know the contents thereof, and that the allegations and statements therein contained are true to the best of my knowledge, information and belief.

HENRY J. TAYLOR,

Subscribed and sworn to before me by the said Henry J. Taylor at Sioux City, Iowa, on this 27th day of April A. D. 1897.

(Seal)

E. A. BURGESS,
Notary Public in and for Woodbury County, Iowa.

April 28, A. D. 1897.

On the foregoing petition it is hereby ordered that said several parties named as respondents to said petition show cause before me in the Court Room of the Circuit Court of the United States in the city of St. Paul, Minnesota, on Thursday, the twentieth day of May, A. D. 1897, at ten o'clock in the forenoon, if any they have, why said petitioner, the Credits Commutation Company of Sioux City, Iowa, should not be permitted to intervene in said several causes as therein entitled, and to proceed in proper time to a hearing upon the matters presented by said petition, and that said petitioner give notice of said hearing to said parties respondent by mailing to each of them or their solicitors, to-wit:

Russell Sage, No. 71 Broadway, in the City of New York.

George J. Gould, No. 71 Broadway, in the City of New York.

Winslow S. Peirce, No. 195 Broadway, in the City of New York.

John F. Dillon, No. 195 Broadway, in the City of New York.

Henry M. Alexander, No. 120 Broadway, in the City of New York.

Charles C. Deming, No. 120 Broadway, in the City of New York.

John A. Stewart, No. 45 Wall street, in the City of New York.

Edward W. Sheldon, No. 45 Wall street, in the City of New York.

William Endicott, Jr., of Boston, Massachusetts.

The Mercantile Trust Company, No. 120 Broadway, in the City of New York.

Alexander & Green, No. 120 Broadway, in the City of New York.

W. W. Green, No. 120 Broadway, in the City of New York.

The Union Trust Company, No. 80 Broadway, in the City of New York.

Wheeler H. Peckham, No. 80 Broadway, in the City of New York.

J. Pierpont Morgan, corner of Wall and Broad streets, in the City of New York.

Edward F. Atkins, of Boston, Massachusetts.

Seward, Guthrie, Morawetz & Steele, of No. 31 Nassau street, in the City of New York.

Wharton & Baird, of the New York Life Building, in the City of Omaha, Nebraska.

The Central Trust Company, No. 54 Wall street, in the city of New York.

Butler, Stillman & Hubbard, No. 54 Wall street, in the city of New York.

Adrian H. Joline, No. 54 Wall street, in the city of New York.

S. H. H. Clark, of St. Louis, Missouri.

Oliver W. Mink, Ames Building, Boston, Massachusetts.

E. Ellery Anderson, No. 27 Williams street, in the city of New York.

Frederic R. Coudert, No. 100 Broadway, in the city of New York.

John W. Doane, No. 45 Wabash avenue, Chicago, Illinois.

The Receivers of the Union Pacific Railway Company, No. 27 Williams street, in the city of New York and of the Ames Building, Boston, Massachusetts.

W. R. Kelly, Union Pacific Building, Omaha, Nebraska.

The Union Pacific Railway Company, having its principal places of business in the said cities of Omaha, Nebraska, and Boston, Massachusetts.

Oliver Ames, Second, and Samuel Carr, Executors, etc., Ames Building, Boston, Massachusetts.

Harwood & Ames, Lincoln, Nebraska.

Oliver Ames, Second, Ames Building, Boston, Massachusetts.

F. Gordon Dexter, Boston, Massachusetts.

Joseph McKenna, Attorney-General of the United States, Washington, District of Columbia.

Judson Harmon, Cincinnati, Ohio.

George Hoadly, No. 22 Williams street, in the City of New York.

John C. Cowin, Ware Block, corner of 15th and Farnam streets, in the City of Omaha, Nebraska.

Louis Fitzgerald, No. 120 Broadway, in the City of New York.

Chauncey M. Depew, Grand Central Station, in the City of New York.

Marvin Hughitt, No. 22 Fifth Avenue, Chicago, Illinois.

T. Jefferson Coolidge, Jr., Ames Building, Boston, Massachusetts.

The Reorganization Committee of the Union Pacific Railway Company, in care of Alvin W. Krech, Secretary, No. 120 Broadway, in the City of New York.

Kuhn, Loeb & Company, No. 27 Pine street, in the City of New York.

Collis P. Huntington, of the City of New York.

a copy of said petition and of this order thereon, by registered mail, postpaid, at least twenty days before said twentieth day of May.

St. Paul, April 28, 1897.

WALTER H. SANBORN,
Circuit Judge.

54

EXHIBIT.

54TH CONGRESS, 2d Session. } SENATE. { DOCUMENT No. 83.

AGREEMENT WITH REORGANIZATION COMMITTEE, UNION PACIFIC RAILROAD.

JANUARY 25, 1897.—Referred to the Committee on Pacific Railroads and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ATTORNEY GENERAL, IN RESPONSE TO SENATE RESOLUTION OF JANUARY 23, RELATIVE TO AGREEMENT MADE WITH WHAT IS COMMONLY KNOWN AS THE REORGANIZATION COMMITTEE OF THE UNION PACIFIC RAILROAD COMPANY RESPECTING THE FORECLOSURE OF THE GOVERNMENT LIEN ON THE PROPERTY OF SAID COMPANY, AND CORRESPONDENCE IN CONNECTION THEREWITH.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 23, 1897.

SIR: I have the honor, pursuant to the Senate resolution of this date, to say that an agreement has been made with what is commonly known as the Reorganization Committee of the Union Pacific Railway Company respecting the foreclosure of the Government lien on property of said company. I transmit herewith a copy of the letter of the President of the United States under authority of which the agreement was made and foreclosure proceedings have been commenced, and copies of the correspondence which embodies the agreement.

The names of the gentlemen who comprise the reorganization committee are as follows: Louis Fitzgerald, chairman; Jacob H. Schiff, T. Jefferson Coolidge, jr., Chauncey M. Depew, Marvin Hughitt, Oliver Ames, 2d.

These papers set forth all the information called for by the resolution.

After the closing of the agreement I designated the United States Trust Company of New York as the depositary, and thereupon, upon the 21st instant, the sum of $4,500,000 was deposited therein in conformity with the terms of the agreement. The certificate representing such deposit is now in the hands of the Secretary of the Treasury.

I have the honor to be, with great respect, your obedient servant,

JUDSON HARMON,
Attorney-General.

The President of the Senate.

EXECUTIVE MANSION,
Washington, January 12, 1897.

DEAR SIR: The bill which has been for some time pending before the Congress, providing for the adjustment and extension of the indebtedness of the Pacific railroads to the Government of the United States, has been defeated in the House of Representatives.

In the case of the Union Pacific Railroad and the Kansas Pacific Railroad, a default in the payment of their indebtedness having occurred, and suits having been commenced for the foreclosure of the lien upon said roads which is paramount to the lien and security of the United States, you are hereby directed, pursuant to the provisions of an act of Congress passed March 3, 1887, after taking such precautions and perfecting such arrangements as are possible to assure as far as practicable the payment of their indebtedness to the Government as a result of the suits now pending or others to be instituted, to take such proceedings in the courts as shall be needful to protect and defend the rights and interests of the United States in respect of such indebtedness, and to take steps to foreclose the mortgages or liens of the United States upon the property of these railroad companies.

In the case of the other aided Pacific railroads as to which no foreclosure suits are pending, a different situation is presented, which requires further consideration before deciding the course to be taken by the Government.

Yours, truly,

GROVER CLEVELAND.

Hon. JUDSON HARMON,
Attorney-General of the United States.

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., JANUARY 18, 1897.

SIR: Hon. George Hoadly, special assistant to the Attorney-General, has sent me your letter to him of the 15th instant, making a proposition on behalf of your committee for a guaranteed minimum bid for the property of the Union Pacific and Kansas Pacific railway companies and the Union Pacific sinking fund as a basis for the Government's proceeding to foreclose its lien thereon. I am authorized by the President to commence foreclosure proceedings, as suggested in your proposal, provided it is modified in the following particulars:

(1) In order to preserve the basis of the original informal negotiations, which took place in the absence of an accurate statement of the sinking fund, your offer should be modified so that the amount of the guaranteed bid therein named will be $45,754,059.99, instead of the sum of $45,000,000.

(2) That the following clause of your proposal be eliminated, viz: "and that, to the extent to which the Government may determine the terms of decree, an equal deposit to be made within a reasonable time before sale shall be required as a qualification of any other bidder." While I have no doubt that the court will follow the uniform practice in railway foreclosures of requiring a deposit of all bidders as a guarantee of good faith and security for performance, and while the Government will obviously have the same interest as other parties in having such condition imposed, I do not wish to make a stipulation on that point as a condition of our arrangement.

(3) That your proposal is understood to mean that in case the property mentioned should not be sold as a unit, minimum bids for the separate portions thereof are to be made which in the aggregate will produce to the Government the net sum above mentioned. In case of separate sales the deposit named by you may of course be used for qualification of bidders representing you at each, in such proportions as may be required under the terms of sale.

(4) Your guaranty applies to such sale or sales as shall become effective. The sale of the sinking fund may be judicial or otherwise.

Your acceptance of the above modifications of your proposal will close the arrangement, and I will proceed to institute foreclosure proceedings on behalf of the Government as soon as the deposit named by

you is made, for which, upon receipt of your acceptance, I will designate the depositary.

Very respectfully,

——— ———,
Attorney General.

LOUIS FITZGERALD, Esq.,
Chairman Reorganization Committee,
Union Pacific Railway Company,
No. 120 Broadway, New York, N. Y.

REORGANIZATION COMMITTEE,
UNION PACIFIC RAILWAY COMPANY,
New York, January, 20, 1897.

Sir: I have your favor of 18th instant, written in reply to my letter of the 15th instant to Hon. George Hoadly, special assistant to the Attorney-General.

On behalf of the reorganization committee of the Union Pacific Railway Company, I have the honor to accept the modifications proposed in your letter of January 18, 1897, to the proposal made in my letter to Hon. George Hoadly dated on the 15th instant.

I am very respectfully,
LOUIS FITZGERALD,
Chairman Union Pacific Reorganization Committee.

HON. JUDSON HARMON,
Attorney-General, Washington, D. C.

NEW YORK, January 15, 1897.

DEAR SIR: Replying, on behalf of the Union Pacific Reorganization Committee, to your favor of the 14th instant, in which you request from this Committee such proposition as it may be willing to make fixing a guaranteed bid at foreclosure and sale for the interest of the United States in the Union Pacific Railway and for the Union Pacific sinking fund, I am authorized to submit to you, and through you to the Executive Department of the Government, the following:

In the event that the Government shall at once take proceedings in the pending foreclosure suits, or by independent bills, for the enforcement of its lien upon the railroad and property of the Union Pacific Railway (which includes the Kansas Pacific line) by sale thereof, and for the sale of the sinking fund in the hands of the Secretary of the Treasury relating to the Union Pacific Railway Company, the Reorganization Committee is prepared to guarantee a minimum bid for the Union and Kansas Pacific lines of railroad and property embraced within the lien of the Government and for the cash and securities in the United States Union Pacific sinking fund, taken at par, which shall produce to the Government, over and above any prior liens and charges upon the railways and sinking fund, the net sum of $45,000,000.

The Committee is prepared to furnish adequate security for the due performance of the above offer. As such security it will deposit with such national depositary in New York city as may be selected by the proper officers of the Government the sum of $4,500,000 in cash (namely, 10 per cent. of the guaranteed bid), subject to the condition that this deposit may be used, under the terms of the foreclosure decree, as a deposit to qualify such bidders as may act on behalf of the Reorganization Committee, and that to the extent to which the Government may determine the terms of decree, an equal deposit, to be made within a reasonable time before sale, shall be required as a qualification of any other bidder. Should the Government desire to liquidate the sinking fund in advance of sale of the railway property the Reorganization Committee will be prepared to anticipate this feature of

its offer by an earlier purchase of the sinking fund at par of the cash and securities therein contained.

As the provision proposed is one of very considerable magnitude and as the proposition is based upon conditions which now exist, it will be obvious that the reorganization committee must reserve, and it desires to be understood as reserving, the right to withdraw this offer at any time previous to its acceptance by the Government.

I have the honor to be, very respectfully, yours,

LOUIS FITZGERALD,
Chairman of the Reorganization Committee
of the Union Pacific Railway Company.

HON. GEORGE HOADLY,
Special Assistant to Attorney-General,
No. 22 Williams street, New York City.

167 United States Circuit Court, District of Nebraska. In Equity.

UNITED STATES OF AMERICA, Complainant, *vs.* UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.	No. 157 S. In Equity.
F. GORDON DEXTER and OLIVER AMES, Second, Trustees, Complainant-, *vs.* UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants.	No. 48 R. In Equity.
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *et als.*, Complainants, *vs.* UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants.	No. 94 Q. In Equity.

Amendments to Petition of Credits Commutation Company for Leave to Intervene in the Above-entitled Causes.

168 To the honorable judges of the circuit court of the United States for the district of Nebraska:

The Credits Commutation Company respectfully asks leave to amend its petition for leave to intervene in the above-entitled causes herein heretofore filed in the following respects, to wit:

First. By inserting in the first line of the second paragraph on page 2, after the word "of," the following:

"The Combination Bridge Company which has recently completed."

Second. By adding at the bottom of page 3 the following:

"Said combination bridge was built for the purpose, among others, of securing connection with the Union Pacific railroad as herein sought; and to that end received a vote of public aid from the city of Sioux City in the sum of about $300,000, and in the articles of incorporation of the aforesaid Combination Bridge Company, said company is empowered to construct, own and operate railways in the States of Iowa and Nebraska; and your petitioner brings this petition in behalf of said bridge company, as well as itself, and purposes and intends to amend in so far as may be necessary, if at all, its own articles of association so as to enable it to incorporate or cause to be incorporated such railroad company or companies as may be necessary to construct, operate and maintain such connecting railroads from its properties aforesaid with the Union Pacific railroad as may be secured to your petitioner in pursuance of this intervention."

Third. By inserting after the word "company" in the third line on page 4, the following:

"and of eleven of the shares of the capital stock of the said com-

pany, (neither said bond nor stock being a party to nor as-
169 senting to any reorganization or sale herein referred to)."

Fourth. By striking out all of paragraph 30 on page 20.

Fifth. By striking out, on page 27, all of paragraph 44 commencing "and your petitioner shows," etc.

Sixth. By striking out in the 8th line of paragraph 47 on page 28, the words "it is not," and by changing the semicolon in the fourth line thereof to a comma.

Seventh. By striking out the word "whatever" in the 9th line of paragraph 47 on page 28, and inserting in lieu thereof the word "whenever."

Eighth. By striking out the words "did not" in the 10th line on page 33, and inserting after the word "act" in the same line, the words "none of."

Ninth. By striking out the word "became" in the 4th line of paragraph 60 on page 33, and inserting in lieu thereof the words "may have become."

Tenth. By adding after the end of the 3rd line on page 37, the following:

"And that all creditors will be held chargeable with knowledge of that fact."

Eleventh. By striking out the words "is also" in the 16th line on page 38, and inserting in lieu thereof the words "was in fact."

Twelfth. By inserting immediately before the words "by said companies" in the 6th line of paragraph 74 on page 43, the words, "for sinking fund purposes," and by striking out the word "its" in the 8th line of said paragraph and inserting in lieu thereof the word "their."

Thirteenth. By striking out the word "not" in the last line of paragraph 84 on page 48.

170 Fourteenth. By inserting at the beginning of paragraph 88 and before the word "your," the following:

"But, if there may be any lawful foreclosure sale."

Fifteenth. By striking out the first word on page 56 and inserting in lieu thereof the word "asks."

Sixteenth. By inserting immediately before the word "authorize" in the 5th line from the bottom on page 65, the words "and could not."

CREDITS COMMUTATION COMPANY,
By JOHN C. COOMBS,
HENRY J. TAYLOR,
Its Solicitors.

Of counsel:
JOHN C. COOMBS,
25 *Equitable Building, Boston, Mass.*
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed May 22, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on said 22nd day of May, 1897, petition of Combination Bridge Company for leave to intervene was filed in said case, which said petition is in words and figures following, to wit:

171 United States Circuit Court, District of Nebraska. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
UNION PACIFIC RAILWAY COMPANY ET AL., Defendants. } No. 157 S. In Equity.

F. GORDON DEXTER and OLIVER AMES, Second, Trustees, Complainant-,
vs.
UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 48 R. In Equity.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *et als.*, Complainants,
vs.
UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 94 Q. In Equity.

Petition of Combination Bridge Company for Leave to Intervene in the Above-entitled Causes.

To the honorable judges of the circuit court of the United States for the district of Nebraska:

Your petitioner, The Combination Bridge Company, a corporation duly created and organized under the laws of the State of
172 Iowa, having filed with the secretary of the State of Nebraska a true copy of its charter or articles of association and a certified copy of the resolution adopted by its board of directors accepting the provisions of the Nebraska law making foreign corporations domestic, and duly becoming a body corporate also of the State of Nebraska, respectfully prays this honorable court to be permitted to intervene on its own behalf in the above-entitled causes, but in subordination to the intervention of the Credits Commutation Company therein, and especially to intervene should the prayer of the Credits Commutation Company therein on its own behalf be not allowed, or should this petitioner, by reason of standing or otherwise, be found the better entitled so to do, by reason of having built a railroad bridge over the Missouri river from Sioux City, Iowa, to Nebraska, under corporate authority, and with the purpose of securing, as a continuation thereof, railroad connection with the Union Pacific railroad under rights and privileges of existing laws of the United States, or for any other reason.

Your petitioner, on behalf of itself, reaffirms and realleges herein all the statements and allegations made by the Credits Commutation

Company in its petition as amended herein to intervene, as completely as therein stated and with the same force and effect as if herein fully set forth, including all the prayers thereof.

COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
HENRY J. TAYLOR,
Its Solicitors.

Of counsel:
JOHN C. COOMBS,
25 *Equitable Building, Boston, Mass.*
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed May 22, 1897. Oscar B. Hillis, clerk.

173 Thereupon afterwards, to wit, upon the said 22nd day of May, 1897, an order was entered in said cause, and filed May 24th, 1897; which said order is in the words and figures following, to wit:

United States Circuit Court, District of Nebraska. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

OLIVER AMES, 2ND, and SAMUEL CARR, Executors, etc., *et al.*, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

And now this cause coming on to be heard on the petition of the Credits Commutation Company for leave to intervene in the above-entitled causes, and also upon the amendments to said petition presented on the hearing and taken as part of said petition, and also upon the supporting petition of the Combination Bridge Company, also presented to the court on said hearing, and upon the order of this court made on April 28, 1897, upon the said petition of the Credits Commutation Company; and it appearing to the court here that the several parties had been notified of the time and place of said hearing as specified and required by the said order of this court, and there appearing upon this hearing for The Credits Commutation Company and for The Combination Bridge Company, petitioners, Mr. John C. Coombs and Mr. Henry J. Taylor, for the

Union Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert, receivers thereof, Mr. John F. Dillon and Mr. W. R. Kelly, for F. Gordon Dexter and Oliver Ames, 2nd, trustees, Mr. Winslow S. Pierce, and for the United States of America, Mr. George Hoadly and Mr. John C. Cowin, and now the court having heard arguments of counsel and being fully advised in the premises, it is—

Ordered, that the prayers of the petitioners for leave to intervene herein be and the same are hereby denied, not as matter of discretion, but because said petitions do not state facts sufficient to show that the petitioners or either of them have a legal right to in-
174 tervene, and upon prayer of the petitioners an appeal to the circuit court of appeals is hereby allowed. The bond on such appeal is fixed at the sum of one thousand dollars.

Dexter and Ames, trustees, complainants and the United States of America, the Union Pacific Railway Company, and the said receivers by their respective counsel duly excepting to such part of this order as grants an appeal.

WALTER H. SANBORN,
Circuit Judge.

May 22, 1897.

Indorsed: Filed May 24, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on June 28th, 1897, petition for appeal was filed in said case; which said petition is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY, THE UNITED States of America, The Union Trust Company of New York, J. Pierpont Morgan and Edwin F. Atkins, Trustees; The Central Trust Company of New York, Trustee; The Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Chicago & Northwestern Railway Company, The Omaha & Republican Valley Railway Company, The Chicago, St. Paul, Minneapolis & Omaha Railway Company, The Kearney & Black Hills Railway Company; Frank H. Peavy, E. C. Michener, and Charles T. Peavy, Copartners under the Firm Name and Style of F. H. Peavy & Company; The Union Pacific, Denver & Gulf Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, The Salina & Southwestern Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Chicago, Kansas & Nebraska Railway Company, The Missouri Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Defendants.

No. 48 "R." In Equity.

In the Matter of the Petitions of the CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY for Leave to Intervene Herein.

175 *Petition for Appeal.*

To the honorable circuit court of the United States for the district of Nebraska:

Your petitioners, The Credits Commutation Company, and The Combination Bridge Company, petitioners for leave to intervene in the above-entitled cause, each for itself, would respectfully represent and show that in the above-entitled cause, pending in the United States circuit court in and for the district of Nebraska, there was entered at the May term, 1897, under date May 22, 1897, in said court, a final order or decree, greatly to the prejudice of your pe-

titioners, which said order or decree is erroneous and inequitable in many respects.

Wherefore, in order that your petitioners may obtain relief in the premises, and have opportunity to show the errors complained of, your petitioners severally and each for itself prays that it may be allowed an appeal in this case to the United States circuit court of appeals for the eighth circuit, and that the proper orders touching security required of them may be made.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.,
HENRY J. TAYLOR,
Sioux City, Iowa,
Their Solicitors and Counsel.

Of counsel:
JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed June 28, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 28th day of June, 1897, assignment of errors was filed in said case; which said assignment of errors is in words and figures following, to wit:

176 In the Circuit Court of the United States for the District of Nebraska.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, Complainants,
v.
THE UNION PACIFIC RAILWAY COMPANY, THE UNITED States of America, The Union Trust Company of New York; J. Pierpont Morgan and Edwin F. Atkins, Trustees; The Central Trust Company of New York, Trustee; The Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Chicago & Northwestern Railway Company, The Omaha & Republican Valley Railway Company, The Chicago, St. Paul, Minneapolis & Omaha Railway Company, The Kearney & Black Hills Railway Company; Frank H. Peavy, E. C. Michener, and Charles T. Peavy, Copartners under the Firm Name and Style of F. H. Peavy & Co.; The Union Pacific, Denver & Gulf Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, The Salina & Southwestern Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Chicago, Kansas & Nebraska Railway Company, The Missouri Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Defendants.

No. 48 "R." In Equity.

In the Matter of the Petitions of the CREDITS COMMUTATION COMPANY and COMBINATION BRIDGE COMPANY for Leave to Intervene.

Assignment of Errors on Appeal Severally in Behalf of The Credits Commutation Company and The Combination Bridge Company, Appellants.

On the 28th day of June A. D. 1897, came the undersigned, Credits Commutation Company, and Combination Bridge Company, appellants, by John C. Coombs and Henry J. Taylor, their solicitors and counsel, and each severally and separately for itself, says that the decree in said cause is erroneous and against the just rights of each of these appellants, and that there is manifest error therein for the following reasons:

1. Because the court erred in denying the petitions of said Credits Commutation Company and said Combination Bridge Company, for leave to intervene herein.

177 2. Because the court erred in decreeing that the petitions of said Credits Commutation Company and said Combination Bridge Company, do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

3. Because the court erred in not granting the petition of the Credits Commutation (—) Bridge Company for leave to intervene herein.

4. Because the court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

5. Because the court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

6. Because the court erred in denying the petition of the Combination Bridge Company for leave to intervene herein.

Wherefore, these appellants severally pray, each for itself, that the said decree be reversed and that the said court be ordered to enter a decree in accordance with the prayers of the respective pleadings of these appellants.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.,
HENRY J. TAYLOR,
Sioux City, Iowa,
Solicitors and Counsel for Intervening Petitioners and Appellants.

Of counsel:
JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed June 28, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 22nd day of July, 1897, appeal bond was filed in said case; which said appeal bond is in words and figures following, to wit:

Know all men by these presents that we, the Credits Commutation Company, and the Combination Bridge Company, principals, and F. L. Eaton and Henry J. Taylor, sureties, are held and firmly bound unto F. Gordon Dexter and Oliver Ames, second,
178 trustees, The Union Pacific Railway Company, The United States of America, The Union Trust Company of New York, J. Pierpont Morgan and Edwin F. Atkins, trustees, The Central Trust Company of New York, trustee, The Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph & Grand Island Railroad Company, The Kansas City & Omaha Railroad Company, The Oregon Railway & Navigation Company, The Oregon Short Line and Utah Northern Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Chicago & Northwestern Railway Company, The Omaha & Republican Valley

Railway Company, The Chicago, St. Paul, Minneapolis & Omaha Railway Company, The Kearney & Black Hills Railway Company, Frank H. Peavy, E. C. Michener, and Charles T. Peavy, copartners under the firm name and style of F. H. Peavy & Co., The Union Pacific, Denver & Gulf Railway Company, The Chicago, Milwaukee & St. Paul Railway Company, The Salina & Southwestern Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Chicago, Kansas & Nebraska Railway Company, The Missouri Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, called herein the respondents, in the full and just sum of one thousand dollars ($1,000), to be paid to the said respondents, their successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of June, in the year of our Lord eighteen hundred and ninety-seven.

Whereas lately, at the May term, 1897, of the circuit court of the United States for the district of Nebraska, in a suit pending in said court between the said respondents and the said Credits Commutation Company and Combination Bridge Company, petitioners, for leave to intervene therein, a decree or order was rendered against said Credits Commutation Company and Combination Bridge Company, petitioners, and the said named petitioners have obtained a writ of appeal of the said court to reverse the said order or decree in the aforesaid suit, and a citation directed to the said respondents, citing and admonishing them to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation:

Now, the condition of the above obligation is such that if the said Credits Commutation Company and Combination Bridge Company shall prosecute said appeal to effect and answer all costs if
179 they fail to make good their plea, then the above obligation, which is only a bond for costs and not a supersedeas bond, to be void; else to remain in full force and virtue.

CREDITS COMMUTATION COMPANY, [SEAL.]
By F. L. EATON,
Secretary and General Manager, Principal.
COMBINATION BRIDGE COMPANY, [SEAL.]
By F. L. EATON, *Secretary, Principal.*
F. L. EATON, *Surety.* [SEAL.]
HENRY J. TAYLOR, *Surety.* [SEAL.]

Signed and delivered in the presence of—
E. A. BURGESS.

STATE OF IOWA, }
Woodbury County, } *ss:*

F. L. Eaton and Henry J. Taylor, sureties on the within and foregoing bond, being duly sworn, each for himself severally deposes

and says that he is worth, after paying his just debts, more than one thousand dollars, exclusive of property exempt from execution by the laws of the State in which he resides.

F. L. EATON.
HENRY J. TAYLOR.

Subscribed and sworn to before me by the above-named F. L. Eaton and Henry J. Taylor, this 28th day of June, A. D. 1897.

[SEAL.] E. A. BURGESS,
Notary Public within and for Woodbury County, State of Iowa.

The above bond is approved this 22nd day — July, A. D. 1897.

W. H. MUNGER,
District Judge.

Approved July 29, 1897.
WALTER H. SANBORN,
Circuit Judge.

Indorsed: Filed July 22, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 29th day of July, 1897, the following order was signed and filed in said case; which said order is in words and figures following, to wit:

180 In the Circuit Court of the United States for the District of Nebraska.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, Complainants, *v.* UNION PACIFIC RAILWAY COMPANY ET AL., Defendants. } No. 48 "R." In Equity.

CREDITS COMMUTATION COMPANY and COMBINATION Bridge Company, Intervening Petitioners, *v.* UNION PACIFIC RAILWAY COMPANY and All Other Parties to This Suit, Respondents.

And now, on this 29 day of July, A. D. 1897, the above cause came on upon the hearing of the petitions of the Credit- Commutation Company and the Combination Bridge Company, for the allowance of appeals herein from the order or decree entered herein at the May term, 1897, denying said parties leave to intervene herein, and in open court, and at the same term thereof at which said order or decree complained of was so entered and rendered by this court, said appeals are hereby allowed, and security for costs fixed at one thousand dollars, and the bond for costs on appeal now filed herein is approved.

WALTER H. SANBORN, *Judge.*

Indorsed: Filed July 29, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 29th day of July, 1897, a citation was duly issued in said case, and returned and filed on the said 29th day of July, 1897, the following of which is the original:

United States of America to F. Gordon Dexter and Oliver Ames, Second, trustees; the Union Pacific Railway Company, the United States of America, the Union Trust Company of New York, J. Pierpont Morgan and Edwin F. Atkins, trustees; the Central Trust Company of New York, trustee; the Central Pacific Railroad Company, the Southern Pacific Company, the St. Joseph & Grand Island Railroad Company, the Kansas City & Omaha Railroad Company, the Oregon Railway & Navigation Company, the Oregon Short Line & Utah Northern Railway Company, the Union Pacific, Lincoln & Colorado Railway Company, the Chicago & Northwestern Railway Company, the Omaha & Republican Valley Railway Company, the Chicago, St. Paul, Minneapolis & Omaha Railway Company, the Kearney & Black Hills Railway Company, Frank H. Peavy, E. C. Michener, and Charles T.
181 Peavy, copartners under the firm name and style of F. H. Peavy & Company; the Union Pacific, Denver & Gulf Railway Company, the Chicago, Milwaukee & St. Paul Railway Company, the Salina & Southwestern Railway Company, the Chicago, Rock Island & Pacific Railway Company, the Chicago, Kansas & Nebraska Railway Company, the Missouri Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert, and John W. Doane, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal filed in the office of the circuit court of the United States for the district of Nebraska, wherein The Credits Commutation Company and The Combination Bridge Company are appellants, and you are appellees, to show cause, if any there be, why the order or decree rendered against the said appellants as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Seal United States Circuit Court, District of Nebraska.

Witness the Honorable Walter H. Sanborn, judge of the circuit court of the United States for the district of Nebraska, this 29 day of July, in the year of our Lord, eighteen hundred and ninety-seven.

WALTER H. SANBORN,
Circuit Judge.

48 R. In equity. U. S. circuit court, district of Nebraska. F. Gordon Dexter *et al. v.* Union Pacific R'y Co. *et al.* Citation. Filed Jul- 29, 1897. Oscar B. Hillis, clerk.

Thereupon, afterwards, to wit, on the 21st day of August, 1897, acceptance of service of citation by Winslow S. Pierce, sol. for Dexter

and Ames, trustees, was filed in said case; which said acceptance is in words and figures following, to wit:

182 United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." In Equity.
F. GORDON DEXTER and OLIVER AMES, SECOND, v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." In Equity.
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." In Equity.

Personal service of the citation on appeal on behalf of the Credits Commutation Company and the Combination Bridge Company, signed by Judge Sanborn, and filed in the above-entitled causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 13th, A. D. 1897.

WINSLOW S. PIERCE,
Sol'r for Dexter & Ames, Trustees.

Indorsed: Filed Aug. 21, 1897. Oscar B. Hillis, clerk.

Thereupon, afterwards, to wit, on said 21st day of August, 1897, acceptance of service of citation by Geo. Hoadly, sp'l ass't to att'y general, was filed in said case; which said acceptance is in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." In Equity.
F. GORDON DEXTER and OLIVER AMES, SECOND, v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." In Equity.
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., v. UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." In Equity.

Personal service of the citation on appeal on behalf of the Credits Commutation Company and the Combination Bridge Company,

signed by Judge Sanborn, and filed in the above-entitled causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 16, A. D. 1897.

GEO. HOADLY,
Special Assistant to the Attorney General in Union Pacific Matters.

Indorsed: Filed Aug. 21st, 1897. Oscar B. Hillis, clerk.

183 Thereupon afterwards, to wit, on the said 21st day of August, 1897, acceptance of service of citation by John C. Cowin, special counsel for the United States, was filed in said case, which said acceptance is in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." In Equity.	
F. GORDON DEXTER and OLIVER AMES, SECOND, *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." In Equity.	
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." In Equity.	

Personal service upon me of the citation on appeal on behalf of the Credits Commutation Company and the Combination Bridge Company, signed by Judge Sanborn, and filed in the above-entitled causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 12th, A. D. 1897.

JOHN C. COWIN,
Special Counsel for United States.

Indorsed: Filed Aug. 21, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 23rd day of August, 1897, acceptance of service of citation by W. R. Kelly, sol'r for U. P. R'y Co., and receivers, was filed in said case, which said acceptance is in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA
v.
UNION PACIFIC RAILWAY COMPANY ET AL. } No. 157 "S." In Equity.

F. GORDON DEXTER and OLIVER AMES, SECOND,
v.
UNION PACIFIC RAILWAY COMPANY ET AL. } No. 48 "R." In Equity.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc.,
v.
UNION PACIFIC RAILWAY COMPANY ET AL. } No. 94 "Q." In Equity.

Personal service upon me of the citation of appeal on behalf of the Credits Commutation Company and the Combination
184 Bridge Company, signed by Judge Sanborn, and filed in the above-entitled causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 21st, A. D. 1897.

W. R. KELLY,

Counsel for Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

Indorsed: Filed Aug. 23, 1897. Oscar B. Hillis, clerk.

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I, Oscar B. Hillis, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the foregoing folios from one (1) to two hundred and twenty-nine (229), inclusive, contain true and faithful transcripts of all the pleadings, process and proceedings of record and on file in said court, in the matter of the petition of Credits Commutation Company and Combination Bridge Company for leave to intervene, filed in the case of F. Gordon Dexter *et al.*, trustees, *vs.* The Union Pacific Railway Company *et al.*, and that a copy of the citation, duly certified, has been lodged and remains in my office as such clerk.

Seal United States Circuit Court, District of Nebraska.

Witness my hand and the seal of said circuit court at Omaha in said district, this 30th day of August, A. D. 1897.

OSCAR B. HILLIS, *Clerk,*
By R. R. BITTINGER,
Deputy Clerk.

Filed Sep. 9, 1897. John D. Jordan, clerk.

185 And on the ninth day of September, A. D. 1897, an appearance of counsel for the appellants was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

CREDITS COMMUTATION CO. ET AL., Appellants,
vs.
F. GORDON DEXTER ET AL. } No. 996.

The clerk will enter *my* appearance as counsel for the appellants.

JOHN C. COOMBS,
25 *Equitable Bldg., Boston, Mass.*
HENRY J. TAYLOR,
Sioux City, Iowa.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1897. No. 996. Credits Commutation Company *et al.*, appellants, *vs.* F. Gordon Dexter *et al.* Appearance. Filed Sep. 9, 1897. John D. Jordan, clerk. John C. Coombs, Henry J. Taylor, counsel for appellants.

And on the eighteenth day of October, A. D. 1897, an appearance of Mr. George Hoadly, counsel for appellee The United States was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

CREDITS COMMUTATION CO. ET AL., Appellants,
vs.
F. GORDON DEXTER ET AL. } No. 996.

The clerk will enter my appearance as counsel for The United States of America, appellee.

GEO. HOADLY.

Endorsed: U. S. circuit court of appeals, eighth circuit, May
186 term, 1897. No. 996. Credits Commutation Co. *et al.*, appellants, *vs.* F. Gordon Dexter *et al.* Appearance. Filed Oct. 18, 1897. John D. Jordan, clerk. George Hoadly, counsel for appellee The United States.

And on the eleventh day of November, A. D. 1897, an appearance of Mr. John C. Cowin, counsel for the United States, was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
F. GORDON DEXTER ET AL. } No. 996.

The clerk will enter my appearance as counsel for the appellee The United States of America.

JOHN C. COWIN,
Special Counsel for the United States.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1897. No. 996. Credits Commutation Co. *et al.*, appellants, *vs.* F. Gordon Dexter *et al.* Appearance. Filed Nov. 11, 1897. John D. Jordan, clerk. John C. Cowin, Omaha, Neb., counsel for appellee.

And on the fifth day of January, A. D. 1898, an appearance of Messrs. John F. Dillon and W. R. Kelly, counsel for the receivers, was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1897.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
F. GORDON DEXTER ET AL. } No. 996.

The clerk will enter *my* appearance as counsel for the appellees, the receivers, &c.

JNO. F. DILLON &
W. R. KELLY.

187 Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1897. No. 996. Credits Commutation Company *et al.*, appellants, *vs.* F. Gordon Dexter *et al.* Appearance. Filed Jan. 5, 1898. John D. Jordan, clerk. John F. Dillon, W. R. Kelly, counsel for appellees, rec'rs.

And on the seventh day of December, A. D. 1898, an appearance of counsel for certain appellees was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
F. GORDON DEXTER ET AL. } No. 996.

The clerk will enter *my* appearance as counsel for the appellees.

WINSLOW S. PIERCE,
For F. Gordon Dexter et al.
G. M. LAMBERTSON,
For Receivers Union Pacific Railway Company and Union Pacific R'y Co.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1898. No. 996. Credits Commutation Company *et al.*, appellants, *vs.* F. Gordon Dexter *et al.* Appearance. Filed Dec. 7, 1898. John D. Jordan, clerk. Winslow S. Pierce, G. M. Lambertson, counsel for certain appellees.

And on the thirty-first day of December, A. D. 1897, there was filed in the clerk's office of said circuit court of appeals a certain notice and motion to dismiss in words and figures following:

188 STATE OF NEW YORK, } *ss.*:
City and County of New York, }

B. W. J. Fox, being duly sworn, deposes and says that he is above the age of twenty-one years and is a citizen and resident of the said State.

That on the 29th day of December, 1897, he served upon the parties below named a copy of the annexed notice and motion of F. Gordon Dexter and Oliver Ames, Second, trustees, by depositing in the United States post-office in the city of New York copies of said notice and motion, enclosed in sealed envelopes, postage fully prepaid, and addressed respectively as hereinafter shown:

John C. Coombs, Equitable building, Boston, Mass.; Henry J. Taylor, Sioux City, Iowa.

And further affiant sayeth not.

B. W. J. FOX.

Sworn to before me this 29th day of December, 1897.
[SEAL.]
JOHN C. SANDERS,
Notary Public, # 8, New York Co.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1897.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees. } No. 996.

Appeals from the circuit court of the United States for the district of Nebraska.

Motion to Dismiss by F. Gordon Dexter and Oliver Ames, Second, Trustees.

189 Now come F. Gordon Dexter and Oliver Ames, Second, trustees, by their counsel, and move the court for orders dismissing the appeals taken in each of the above-entitled cases by The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain causes the jurisdiction of the courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled causes, and the court in denying such application exercised its discretionary powers, and its action cannot be reviewed by this court.

Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

F. GORDON DEXTER AND
OLIVER AMES, SECOND, *Trustees*,
By WINSLOW S. PIERCE,
R. S. HALL, *Their Counsel*.

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1897.

190 THE CREDITS COMMUTATION COMPANY and THE Combination Bridge Company, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION Bridge Company, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees. } No. 996.

To Messrs. John C. Coombs and Henry J. Taylor, counsel for appellants:

Please take notice that on Monday, the 10th day of January, 1898, at the opening of the court, or as soon thereafter as counsel can be heard, the motion of which the foregoing is a copy will be submitted to the United States circuit court of appeals for the eighth circuit for the decision of the said court thereon.

WINSLOW S. PIERCE,
R. S. HALL,
Counsel for Appellees F. Gordon Dexter and Oliver Ames, Trustees, for the Purpose of This Motion.

Endorsed: U. S. circuit court — appeals, eighth circuit, Dec. term. No. 995. The Credits Commutation Company and The Combination Bridge Company, appellants, against The United States of America *et al.*, appellees, and one other case. Notice of motion to dismiss by F. Gordon Dexter and Oliver Ames, Second, trustees. Filed Dec. 31, 1897. John D. Jordan, clerk.

And on the thirty-first day of December, A. D. 1897, there was filed a certain notice and motion to dismiss by the Union Pacific Railway Company and S. H. H. Clark *et al.*, receivers, in the words and figures following, to wit:

191 STATE OF NEW YORK, }
City and County of New York, } *ss.*:

B. W. J. Fox, being duly sworn, deposes and says that he is above the age of twenty-one years and is a citizen and resident of said State.

That on the 29th day of December, 1897, he served upon the parties below named a copy of the annexed notice and motion of the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, receivers, by depositing in the United States post-office in the city of New York copies of said notice and motion, enclosed in

sealed envelopes, postage fully prepaid, and addressed respectively as hereinafter shown:

John C. Coombs, Equitable building, Boston, Mass.
Henry J. Taylor, Sioux City, Iowa.

And further affiant sayeth not.

B. W. J. FOX.

Sworn to before me this 29th day of December, 1897.

[SEAL.] JOHN C. SANDERS,
Notary Public, # 8, *New York Co.*

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1897.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees. } No. 996.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
192 OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., Appellees. } No. 997.

To Messrs. John C. Coombs and Henry J. Taylor, counsel for appellants:

Please take notice that on Monday, the 10th day of January, A. D. 1898, at the opening of the court, or as soon thereafter as counsel can be heard, the motion, of which the foregoing is a copy, will be submitted to the United States circuit court of appeals for the eighth circuit for the decision of the said court thereon.

JOHN F. DILLON,
WM. R. KELLY,
Counsel for the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1897.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, ET AL., Appellees. } No. 996.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, *et al.*, Appellees. } No. 997.

Appeals from the circuit court of the United States for the district of Nebraska.

Motion to Dismiss by the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

193

Now come the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, receivers, by John F. Dillon and W. R. Kelly, their solicitors, and move the court for orders dismissing the appeals taken in each of the above entitled cases by The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled causes, and the court in denying such application exercised the discretionary powers, and its action cannot be reviewed by this court.

Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Com-

pany and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

THE UNION PACIFIC RAILWAY COMPANY AND
S. H. H. CLARK,
OLIVER W. MINK,
E. ELLERY ANDERSON,
FREDERIC R. COUDERT, AND
JOHN W. DOANE,
Receivers,
By JOHN F. DILLON,
WM. R. KELLY,
Their Solicitors.

194 Endorsed: U. S. circuit court of appeals, eighth circuit, December term. No. 995. The Credits Commutation Company and The Combination Bridge Company, appellants, against The United States of America *et al.*, appellees, and two other cases. Notice of motion to dismiss by the Union Pacific Railway Company, S. H. H. Clark, *et al.* Filed Dec. 31, 1897. John D. Jordan, clerk.

And on the twenty-eighth day of November, A. D. 1898, there was filed in the clerk's office of said court in said cause a certain notice and amended motion to dismiss in words and figures following, to wit:

195 United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants, *against* F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees.	No. 996.

To John C. Coombs, Esq., Equitable building, Boston, Mass., and to Henry J. Taylor, Esq., Sioux City, Iowa.

GENTLEMEN: Please take notice that we have filed in the circuit court of appeals for the eighth circuit, with the clerk of said court and in the proceedings above entitled, an amended and supplemental motion to dismiss the appeal therein, of which the attached is a copy. Counsel for appellees will call up said motion for hearing at 10 o'clock a. m., on Monday, December 5th, 1898, or as soon thereafter as counsel can be heard.

Dated November 25th, 1898.

WINSLOW S. PIERCE,
Counsel for F. Gordon Dexter and Oliver Ames, Second, Trustees.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees.
No. 996.

Amended and Supplemental Motion to Dismiss Appeals.

Appeals from the circuit court of the United States for the district of Nebraska.

Motion to dismiss by F. Gordon Dexter and Oliver Ames, Second, trustees.

Now come F. Gordon Dexter and Oliver Ames, Second, trustees, by Winslow S. Pierce, their solicitor, and move the court for order dismissing the appeal taken in the above-entitled case by
196 The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which said appeal is taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled causes, and the court, in denying such application, exercised the discretionary powers and its action cannot be reviewed by this court.

Third. Because the appellants were not parties to any of the said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petition- of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

Fifth. Because appellants did not file with the clerk of the court below a petition for the appeal and assignments of errors, as required by the eleventh rule of this court, before the appeal was allowed.

Sixth. Because the appellants did not docket the said appeal and file the record of said case with the clerk of this court as and within the time prescribed by section 5 of the fourteenth rule and section 1 of the sixteenth rule of this court.

Seventh. Because the questions arising on the appeal from the denial of the application of the Credits Commutation Company and the Combination Bridge Company to intervene in the court below have become moot, forasmuch as the suit in which said inter-
197 vention was sought has gone to a final decree and the *res* of the action passed from the custody of the court, and because said proposed intervention, if allowed now, would be futile and ineffective, inasmuch as no appeal has been taken from said decree and the time for appeal has elapsed, and in this behalf these appellees ask leave to exhibit certified copies of the records of the court below in the premises.

WINSLOW S. PIERCE,
Counsel for F. Gordon Dexter and Oliver Ames, Second, Trustees.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term. No. 996. The Credits Commutation Company and The Combination Bridge Company, appellants, against F. Gordon Dexter and Oliver Ames, trustees. Notice of and amended motion to dismiss by F. Gordon Dexter and Oliver Ames, trustees. Filed Nov. 28, 1898. John D. Jordan, clerk.

And on the twenty-eighth day of November, A. D. 1898, there was filed in the clerk's office of said circuit court of appeals in said cause a notice and amended motion to dismiss by the Union Pacific Railway Company and S. H. H. Clark *et al.*, receivers, in words and figures following, to wit:

198 United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees.
No. 996.

To John C. Coombs, Esq., Equitable building, Boston, Mass., and to Henry J. Taylor, Esq., Sioux City, Iowa.

GENTLEMEN: Please take notice that we have filed in the circuit court of appeals for the eighth circuit, with the clerk of said court and in the proceedings above entitled, an amended and supplemental motion to dismiss the appeal therein, of which the attached is a copy. Counsel for appellees will call up said motion for hearing at 10 o'clock a. m. on Monday, December 5th, 1898, or as soon thereafter as counsel can be heard.

Dated November 25, 1898.

G. M. LAMBERTSON,
Counsel for the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees.
No. 996.

Amended and Supplemental Motion to Dismiss Appeals.

Appeals from the circuit court of the United States for the district of Nebraska.

Motion to dismiss by the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, receivers.

199 Now come the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, receivers, by their counsel, and move the court for orders dismissing the appeals taken in the above entitled case by The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, 1891, entitled "An act to establish circuit court- of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled causes, and the court, in denying such application, exercised the discretionary powers, and its action cannot be reviewed by this court.

Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

Fifth. Because the appellants did not file with the clerk of the court below a petition for the appeal and assignments of errors, as required by the eleventh rule of this court, before the appeal was allowed.

Sixth. Because appellants did not docket the said appeal and file

the record of said case with the clerk of this court as and
200 within the time prescribed by section 5 of the fourteenth rule and section 1 of the sixteenth rule of this court.

Seventh. Because the questions arising on the appeal from the denial of the application of the Credits Commutation Company and the Combination Bridge Company to intervene in the court below have become moot, forasmuch as the suit in which said intervention was sought has gone to a final decree and the *res* of the action passed from the custody of the court, and because said proposed intervention, if allowed now, would be futile and ineffective, inasmuch as no appeal has been taken from said decree and the time for appeal has elapsed, and in this behalf these appellees ask leave to exhibit certified copies of the records of the court below in the premises.

G. M. LAMBERTSON,
Counsel for the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term. No. 996. The Credits Commutation Company and The Combination Bridge Company, appellants, against F. Gordon Dexter and Oliver Ames, Second, trustees, *et al.*, appellees. Notice of and amended motion to dismiss by the Union Pacific Railway Company and S. H. H. Clark *et al.* Filed Nov. 28, 1898. John D. Jordan, clerk.

201 And on the second day of December, A. D. 1898, there was filed in the clerk's office of said circuit court of appeals a notice and motion to dismiss by the United States in words and figures following, to wit:

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *v.* F. GORDON DEXTER and OLIVER AMES, Second, Trustees, *et al.*, Appellees.	No. 996. Affidavit.

STATE OF NEBRASKA, } ss:
County of Douglas, }

John C. Cowin, being first duly sworn, deposes and says that he is special counsel for the United States of America in the above-entitled cause; that as such special counsel, on the 30th day of November, 1898, about the hour of twelve o'clock noon, he deposited in the post-office a copy of the notice and motion hereto attached, addressed to Henry J. Taylor, Esquire, Sioux City, Iowa.

JOHN C. COWIN.

Subscribed in my presence and sworn to before me this 30th day of November, 1898.

[SEAL.] MARY A. SHAW,
Notary Public within and for Douglas County, Nebraska.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *vs.* F. GORDON DEXTER and OLIVER AMES, Second, Trustees, *et al.*, Appellees.	No. 996. Notice of Motion to Dismiss Appeal.

To John Coombs, Esquire, Equitable building, Boston, Mass., and to Henry J. Taylor, Esquire, Sioux City, Iowa.

GENTLEMEN: Please take notice that on behalf of the
202 United States of America I have filed in the circuit court of appeals for the eighth circuit, with the clerk of said court and in the proceedings above entitled, a motion to dismiss the appeal therein, of which a copy is hereto attached.

Said motion will be called up for hearing at ten o'clock a. m. on Tuesday, December 6, 1898, at the court-room, at St. Louis, or as soon thereafter as counsel can be heard.

Dated Nov. 30th, 1898.

JOHN C. COWIN,
Special Counsel for the United States.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *v.* F. GORDON DEXTER and OLIVER AMES, Second, Trustees, *et al.*, Appellees.	No. 996. Motion to Dismiss Appeals.

Appeals from the circuit court of the United States for the District of Nebraska.

Motion to Dismiss Appeals by the United States of America.

Now comes the United States of America, by John C. Cowin, its counsel, and move the court for orders dismissing the appeals taken in the above-entitled cause by The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States

within the meaning of section 6 of the act of Congress approved March 3, 1891, defining and regulating in certain cases the jurisdiction of the courts of the United States and for other purposes.

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled cause, and the court in denying such application exercised the discretionary powers, and its action cannot be reviewed by this court.

203 Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

Fifth. Because the appellants did not file with the clerk of the court below a petition for the appeal and assignments of errors, as required by the eleventh rule of this court, before the appeal was allowed.

Sixth. Because the appellants did not docket the said appeal and file the record of said case with the clerk of this court as and within the time prescribed by section 5 of the fourteenth rule and section 1 of the sixteenth rule of this court.

Seventh. Because the questions arising on the appeal from the denial of the application of the Credits Commutation Company and the Combination Bridge Company to intervene in the court below have become moot, forasmuch as the suit in which said intervention was sought has gone to a final decree, and the *res* of the action passed from the custody of the court, and because said proposed intervention, if allowed now, would be futile and ineffective, inasmuch as no appeal has been taken from said decree and the time for appeal has elapsed, and in this behalf these appellees ask leave to exhibit certified copies of the records of the court below in the premises.

Eighth. Because said applications to intervene and the said appeals are attempted proceedings and litigation on the part of the petitioners against the United States of America, which have never consented that such proceedings be brought against them, but have objected and still do object to the same.

JOHN C. COWIN,
Special Counsel for the United States of America.

204 Endorsed: No. 996. United States circuit court of appeals for the eighth circuit. The Credits Commutation Co. and The Combination Bridge Company, appellants, *vs.* F. Gordon Dexter and Oliver Ames, Second, trustees, *et al.*, appellees. Notice and motion by United States to dismiss the appeals. Filed Dec. 2, 1898. John D. Jordan, clerk. John C. Cowin, special counsel for the United States.

205 And on the second day of December, A. D. 1898, there was filed in the clerk's office of said circuit court of appeals a certificate of clerk as to time of filing assignment of errors in words and figures following, to wit:

United States Circuit Court, District of Nebraska. In Equity.

F. GORDON DEXTER and OLIVER AMES, Second, Trustees, Complainant-, *vs.* UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 48 R. In Equity.

Additional and Supplemental Transcript of Record to Correct Original Transcript of Record in United States Circuit Court of Appeals for Eighth Circuit.

Pleas before the Honorable Walter H. Sanborn, judge of the circuit court of the United States for the eighth judicial circuit, sitting in the circuit court of the United States for the district of Nebraska, within the said eighth judicial circuit, at the May term, A. D. 1897.

Be it remembered that on the 28th day of June, 1897, the Credits Commutation Company and Combination Bridge Company filed in said case their assignment of errors and their petition for appeal set out in the original abstract now on file in the said United States circuit court of appeals, and said assignment of errors was filed with the clerk of this court at the same time as and with said petition for appeal.

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I, Oscar B. Hillis, clerk of the circuit court of United States for the district of Nebraska, do hereby certify that the above contains a true and faithful statement and transcript of the time and fact of the filing in said court of the said assignment of errors and petition for appeal in the matter of the petition of Credits Commutation Company and Combination Bridge Company for leave to intervene, filed in the case of F. Gordon Dexter *et al.*, trustees, *vs.* Union Pacific Railway Company *et al.*

206 Witness my hand and the seal of said circuit court, at Omaha, in said district, this 30th day of November, A. D. 1898.

[SEAL.] OSCAR B. HILLIS, *Clerk.*

[Cancelled 10c. internal-revenue stamp.]

Endorsed: 996. Credits Commutation Co. *et al.*, appellants, *vs.* F. Gordon Dexter *et al.*, appellees. Certificate of clerk as to time of filing assignment of errors. Filed Dec. 2, 1898. John D. Jordan, clerk.

207 And on the seventh day of December, A. D. 1898, in the record of the proceedings of said circuit court of appeals is an order of submission of said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

WEDNESDAY, *December* 7, 1898.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
F. GORDON DEXTER ET AL. } No. 996.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause having been called for hearing in its regular order, and Judge Sanborn, being disqualified, retired and took no part in the hearing.

Thereupon the several motions to dismiss filed herein were argued by Mr. Winslow S. Pierce and Mr. G. M. Lambertson in support thereof, and by Mr. John C. Coombs in opposition thereto; whereupon the said motions were submitted and by the court taken under advisement.

And on the seventh day of December, A. D. 1898, an opinion of said United States circuit court of appeals was filed in said cause in the following words, to wit:

208 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants,
vs.
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995. Appeal from the Circuit Court of the United States for the District of Nebraska.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants,
vs.
F. GORDON DEXTER and OLIVER AMES, Second, *et al.*, Appellees. } No. 996. Appeal from the Circuit Court of the United States for the District of Nebraska.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants,
vs.
OLIVER AMES, SECOND, and SAMUEL Carr, Executors of the Last Will and Testament of Frederick L. Ames, Deceased, *et al.*, Appellees. } No. 997. Appeal from the Circuit Court of the United States for the District of Nebraska.

Mr. Winslow S. Pierce and Mr. G. M. Lambertson (Mr. Lawrence Greer was with them on the brief) for the motion.

Mr. John C. Coombs and Mr. Henry J. Taylor, *contra*.

Before Caldwell and Thayer, circuit judges.

Per Curiam:

These cases are before the court on the present occasion on motions to dismiss the several appeals. The appeals were taken from orders made by the Honorable Walter H. Sanborn, circuit judge, which denied the application of The Credits Commutation Company and The Combination Bridge Company, the appellants, for leave to intervene in three suits which were at the time pending in the circuit court of the United States for the district of Nebraska. One
209 of these suits was a bill filed on October 9, 1893, by Oliver Ames, Second, and Samuel Carr, executors of the last will and testament of Frederick L. Ames, deceased, *et al.*, against the Union Pacific Railway Company, *et al.*, which is commonly termed "the stockholders' suit;" the other was a bill which was filed on January 21, 1895, by F. Gordon Dexter and Oliver Ames, Second, trustees, against the Union Pacific Railway Company, *et al.*, for the purpose of foreclosing the first mortgage on the Union Pacific railway; and the third was a bill filed on January 23, 1897, by the United States against the Union Pacific Railway Company, *et al.*, for the purpose of foreclosing its statutory lien upon the property of said railway company.

On April 28, 1897, when said cases were about ripe for a final decree, the Credits Commutation Company and the Combination Bridge Company presented an intervening petition to Judge Sanborn, and asked leave to file the same in each of said suits, and thereby become parties thereto. On the presentation of the intervening petition an order was made requiring all parties in interest in said suits to show cause, on a day specified, why the prayer of the petitioners for leave to intervene should not be granted. On the return day of said order, objections to the filing of said intervening petition having been duly made and considered, it was ordered "that the prayers of the petitioners for leave to intervene herein, be, and the same are hereby denied, not as a matter of discretion, but because said petitions do not state facts sufficient to show that the petitioners, or either of them, have a legal right to intervene." From this order which was entered at the same time and in the same form in each of the above cases the present appeals were taken.

The ground upon which the petitioners below, who are the appellants here, sought leave to intervene in the pending litigation against the Union Pacific Railway Company, was as follows:

The Credits Commutation Company alleged that it was entitled as beneficiary in a deed of assignment, to three-fourths of the capital stock of the Sioux City & Northern Railway Company, which was a railroad extending northwardly from Sioux City, Iowa, for a distance of about one hundred miles to a junction with the Great Northern railroad in the State of Minnesota; that it was also entitled to all the stock of the Sioux City, O'Neill & Western railroad, which was a road extending westwardly from Sioux City, Iowa, to O'Neill, Nebraska, a distance of about one hundred and thirty miles; that these roads were connected at Sioux City, Iowa, by a bridge across

the Missouri river, whose capital stock was all owned by the Credits Commutation Company; that the petitioners proposed to extend the Sioux City, O'Neill & Western railroad to a junction with the Union Pacific railroad in the western part of the State of Nebraska; that their ultimate design was to form a line of transportation by means of the aforesaid railroad and bridge companies, and certain terminal properties in Sioux City which the petitioners then owned, and thereby promote an interchange of traffic between the head of the Great Lakes at Duluth, and the region of country lying west of the Missouri river opposite to Sioux City. They further averred in the intervening complaint that by virtue of various provisions of the act creating the Union Pacific Railway Company and the amendments thereof, particularly by sections 14 and 15 of the act of July 1, 1862, (12 Stat., 489, c. 120) and by section 17 of the act of
210 July 2, 1864, (13 Stat., 356, c. 216) * * * the right was accorded to the petitioners to form a junction with the Union Pacific railroad not farther west than the one hundredth meridian of longitude, whenever they should have completed their proposed line of railroad through the States of Iowa *or* Minnesota to Sioux City, and thence southwestwardly to a point on the main line of the Union Pacific railroad. In view of the foregoing facts, the petitioners craved leave to intervene and be made parties to the three suits then pending against the Union Pacific Railway Company, to the end that they might, in the first place, resist and if possible prevent a foreclosure sale of the property and franchises of said railroad company under decrees made in the pending suits, or if defeated in that object, to the end that they might preserve their alleged right to connect their proposed line of railroad with the main line of the Union Pacific Railway Company, by appropriate provisions inserted in the decree of foreclosure, provided a foreclosure sale of the latter company's property and franchise should eventually be ordered.

The motion to dismiss the several appeals is grounded on the proposition that the order from which the several appeals were taken was not a final judgment or decree from which an appeal will lie to this court, and upon the further proposition that the action of the lower court in refusing leave to intervene is not reviewable on appeal, inasmuch as it rested in the sound discretion of the chancellor to admit or reject the intervention. Both of these positions are, in our opinion, well taken. The order denying leave to intervene was not final within any of the definitions usually given of a final order or decree, inasmuch as it did not dispose of the petitioners' alleged right to form a junction with the main line of the Union Pacific railroad, which was the substantial right asserted, but left them at full liberty to litigate that question by an original bill, or by any other method of procedure which they saw fit to adopt. The trial court could not, and did not, finally adjudicate any of the questions which were presented by the intervening complaint, for the reason that it refused to give the petitioners a standing in court to be heard with respect to such questions, and also refused to permit the intervening complaint to be filed and become a part of the

record. None of the issues, therefore, which were tendered by the petitioners in their intervening complaint ever passed under judicial review in such a manner as to estop the petitioners from tendering like issues on any future occasion, because the trial court refused to allow such issues to be incorporated into the pending suits in such a form that they could be tried and determined. When such action is taken, that is to say, when leave to intervene in an equity case is asked and refused, the rule, so far as we are aware, is well settled that the order thus made denying leave to intervene is not regarded as a final determination of the merits of the claim on which the intervention is based, but leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding. Such orders not only lack the finality which is necessary to support an appeal, but it is usually said of them that they cannot be reviewed because they merely involve an exercise of the discretionary powers of the trial court. *Ex parte Cutting*, 94 U. S., 14; *Hamlin v. Continental Trust Company of the City of New York*, 47 U. S. App., 422, 428, 429; 78 Fed. Rep., 664; *Jones & Laughlins, Limited, v. Sands*,
211 51 U. S. App., 153, 157; 79 Fed. Rep., 913; *In re Streett, petitioner*, 8 U. S. App., 645, 650; 62 Fed. Rep., 218.

It is doubtless true that cases may arise where a denial of the right of a third party to intervene therein would be a practical denial of certain relief to which the intervener is fairly entitled, and can only obtain by an intervention. Cases of this sort are those where there is a fund in court undergoing administration, to which a third party asserts some right which will be lost in the event that he is not allowed to intervene before the fund is dissipated. In such cases an order denying leave to intervene is not discretionary with the chancellor, and will generally furnish the basis for an appeal, since it finally disposes of the intervener's claim by denying him all right to relief. The cases at bar, however, are not of that character. The petitioners were under no obligation to intervene in the litigation against the Union Pacific Railway Company to preserve their alleged right to form a junction with the road of that company when they should have completed their own road to a suitable junction point. The question which they sought to litigate in the pending litigation could, we think, with more propriety and with less difficulty, have been litigated by an independent bill, after they had completed, or were about completing their line to a suitable junction point. Prior to that time the questions which they sought to raise by means of the intervening petition were speculative questions, which the lower court, as we think, very properly refused to consider or determine.

It was suggested in argument that as the lower court saw fit to insert a clause in its order that it had not refused leave to intervene "as a matter of discretion," but because the petitioners had no legal right to intervene, therefore the motion to dismiss is not tenable, so far as it is based on the discretionary character of the order. The answer to this suggestion is that the trial court by inserting such a clause in its order explanatory thereof, could not give an effect to the order which was in any respect different from the effect which it had by virtue of the nature of the proceeding in which the order

was made. The intervening petition merely invoked the discretionary power of the court, and it could exercise no other power in the premises, whatever the purpose of the court or its own declaration on the subject may have been. The fact is that the lower court simply exercised its discretionary authority in denying leave to intervene, and it did not succeed in rendering a judgment upon the merits of the petitioners' claim which will conclude them in any subsequent suit, although it may have intended to do so. As it is now well settled since the decision in *McLish v. Roff*, 141 U. S., 661, that an appeal will only lie to this court from orders or decrees which are final in their character, and which involve something more than the exercise of purely discretionary powers (except in some cases for which special provision is made by the seventh section of the act under which this court was created, 26 Stat., 826, c. 517)—it follows that the appeals cannot be entertained, and that the motions to dismiss the same must be sustained. It is so ordered.

Filed December 7, 1898.

212 And on the seventh day of December, A. D. 1898, in the record of the proceedings of said circuit court of appeals is a decree in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

WEDNESDAY, *December* 7, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
vs.
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees; The Union Pacific Railway Company, The United States of America, The Union Trust Company of New York; J. Pierpont Morgan and Edwin F. Atkins, Trustees; The Central Trust Company of New York, Trustee; The Central Pacific Railroad Company, The Southern Pacific Company, The St. Joseph and Grand Island Railroad Company, The Kansas City and Omaha Railroad Company, The Oregon Railway and Navigation Company, The Oregon Short Line and Utah Northern Railway Company, The Union Pacific, Lincoln and Colorado Railway Company, The Chicago and Northwestern Railway Company, The Omaha and Republican Valley Railway Company, The Chicago, St. Paul, Minneapolis and Omaha Railway Company; Frank H. Peavy, E. C. Michener, and Charles T. Peavy, Copartners under the Firm Name and Style of F. H. Peavy and Company; The Union Pacific, Denver and Gulf Railway Company, The Chicago, Milwaukee and St. Paul Railway Company, The Salina and Southwestern Railway Company, The Chicago, Rock Island and Pacific Railway Company, The Chicago, Kansas and Nebraska Railway Company, The Missouri Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert and John W. Doane, and The Kearney & Black Hills Railway Company. } No. 996.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Nebraska and upon the several motions and amended motions to dismiss filed by appellees and was argued by counsel.

On consideration whereof it is now here ordered, adjudged,
213 and decreed by this court that said motions be, and the same are hereby, sustained, and that the appeal from the said circuit court in this cause be, and the same is hereby, dismissed with costs, and that F. Gordon Dexter and Oliver Ames, Second, trustees; the Union Pacific Railway Company, the United States of America, the Union Trust Company of New York, J. Pierpont Morgan and Edwin F. Atkins, trustees; the Central Trust Company of New

York, trustee; the Central Pacific Railroad Company, the Southern Pacific Company, the St. Joseph and Grand Island Railroad Company, the Kansas City and Omaha Railroad Company, the Oregon Railway and Navigation Company, the Oregon Short Line and Utah Northern Railway Company, the Union Pacific, Lincoln and Colorado Railway Company, the Chicago and Northwestern Railway Company, the Omaha and Republican Valley Railway Company, the Chicago, St. Paul, Minneapolis and Omaha Railway Company, the Kearney & Black Hills Railway Company; Frank H. Peavy, E. C. Michener, and Charles T. Peavy, copartners under the firm name and style of F. H. Peavy and Company; the Union Pacific, Denver and Gulf Railway Company, the Chicago, Milwaukee and St. Paul Railway Company, the Salina and Southwestern Railway Company, the Chicago Rock Island and Pacific Railway Company, the Chicago, Kansas and Nebraska Railway Company, the Missouri Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert, and John W. Doane have and recover against the Credits Commutation Company and the Combination Bridge Company the sum of twenty dollars for their costs herein and have execution therefor.

To which ruling, order, and decree the appellants, by their counsel, at the time duly excepted and still except.

Thereupon the appellants in open court prayed an appeal to the Supreme Court of the United States, which is hereby allowed.

December 7, 1898.

214 And on the twentieth day of February, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals in said cause a petition for appeal in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *vs.* F. GORDON DEXTER and OLIVER Ames, Second, Trustees; United States of America, Union Pacific Railway; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John W. Doane, Receivers, *et al.*, Appellees.	No. 996	Petition for Appeal.

To the honorable circuit court of appeals for the eighth circuit:

Your petitioners, Credits Commutation Company and Combination Bridge Company, appellants, each for itself would respectfully represent and show that in the above-entitled cause, pending in the United States circuit court of appeals for the eighth circuit,

there was entered at the December term, 1898, under date December 7, 1898, in said court, a final order or decree greatly to the prejudice of your petitioners; which said order or decree is erroneous and inequitable in many respects.

Wherefore, in order that your petitioners may obtain relief in the premises and have opportunity to show the errors complained of, your petitioners severally and each for itself prays that it may be allowed an appeal in this cause to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and that a transcript of the record, proceedings, and papers in said cause, duly authenticated, may be sent to the Supreme Court of the United States, and that proper orders touching security required of them may be made.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS AND
HENRY J. TAYLOR,
Their Solicitors and Counsel.

Endorsed: No. 996. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and The Combination Bridge Company, appellants, *vs.* F. Gordon Dexter *et al.*, appellees. Petition for appeal. Filed Feb. 20, 1899. John D. Jordan, clerk.

215

And on the twentieth day of February, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals in said cause an assignment of errors in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and THE COMBINATION Bridge Company, Appellants, *vs.* F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees; United States of America, Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John Doane, Receivers, *et al.*, Appellees.	No. 996.

Assignment of Errors on Appeal Severally in Behalf of the Credits Commutation Company and the Combination Bridge Company.

On the 20th day of February, A. D. 1899, come the undersigned, Credits Commutation Company and Combination Bridge Company, appellants, by John C. Coombs and Henry J. Taylor, their solicitors and counsel, and each severally and separately for itself says that the order or decree entered in said cause in the circuit court of the United States for the district of Nebraska is erroneous and against the just rights of each of these appellants, and that there is manifest error therein for the following reasons:

1. Because the court erred in denying the petitions of said Credits Commutation Company and said Combination Bridge Company for leave to intervene herein.

2. Because the court erred in decreeing that the petitions of said Credits Commutation Company and Combination Bridge Company do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

216 3. Because the court erred in not granting the petition of the Credits Commutation Company for leave to intervene herein.

4. Because the court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

5. Because the court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

6. Because the court erred in denying the petition of the Combination Bridge Company for leave to intervene herein.

And further severally and separately each for itself says that the decree or order in said cause made and entered on the 7th day of December, 1898, in said United States circuit court of appeals for the eighth circuit is erroneous and against the just rights of each of these appellants, and that there is manifest error therein for the following reasons:

7. Because the court erred in denying the petition of said Credits Commutation Company and said Combination Bridge Company for leave to intervene herein.

8. Because the court erred in decreeing that the petitions of said Credits Commutation Company and Combination Bridge Company do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

9. Because the court erred in not granting the petition of the Credits Commutation Company for leave to intervene herein.

10. Because the court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

11. Because the court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

12. Because the court erred in denying the petition of the Combination Bridge Company for leave to intervene herein.

13. Because the court erred in its final order and decree herein under date of December 7, 1898, in sustaining appellees' motions to dismiss the appeal from the circuit court of the United States for the district of Nebraska, and in dismissing said appeal.

217 Wherefore these appellants severally pray, each for itself, that the said decree or order of said circuit court and that the said decree or order of the said United States circuit court of appeals be reversed, and that the said courts be ordered to enter a decree or order in accordance with the prayers of the respective pleadings of these appellants.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
HENRY J. TAYLOR,
Their Solicitors and Counsel.

Endorsed: No. 996. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and the Combination Bridge Company, appellants, *vs.* F. Gordon Dexter *et al.*, appellees. Assignment of errors on appeal severally in behalf of the Credits Commutation Company and the Combination Bridge Company. Filed Feb. 20, 1899. John D. Jordan, clerk.

And on the twentieth day of February, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals an appeal bond in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY *et al.*, Appellants, *vs.* F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees; United States of America, Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John Doane, Receivers, *et al.*, Appellees.	No. 996. Appeal Bond.

Know all men by these presents that we, the Credits Commutation Company and Combination Bridge Company, principals,
218 and F. L. Eaton and Henry J. Taylor, sureties, are held and firmly bound unto F. Gordon Dexter and Oliver Ames, Second, trustees; United States of America, — Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederick R. Coudert, John Doane, receivers, *et al.*, called herein the appellees, in the full and just sum of one thousand dollars ($1,000), to be paid to the said appellees, their successors or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 20th day of February, in the year of our Lord eighteen hundred and ninety-nine.

Whereas lately, at the December term, 1898, of the United States circuit court of appeals for the eighth circuit, in a suit depending in the said circuit court of appeals between the said appellees and the said Credits Commutation Company and Combination Bridge Company, a decree or order was rendered against the said Credits Commutation Company and Combination Bridge Company, and the said named appellants having obtained a writ of appeal and filed a copy thereof in the clerk's office of the said court to reverse said order or decree in the aforesaid suit, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, the third Monday of March next:

Now, the condition of the above obligation is such that if the said appellants shall prosecute their appeal to effect and answer all costs if they fail to make good their plea, then the above obligation, which

is only a bond for costs and not a supersedeas bond, to be void; else to remain in full force and virtue.

CREDITS COMMUTATION COMPANY,
By F. L. EATON, *Sec'y.*
COMBINATION BRIDGE COMPANY,
By F. L. EATON, *Sec'y.*
F. L. EATON. [L. S.]
HENRY J. TAYLOR. [L. S.]

Sealed and delivered in the presence of—

——— ———.

219 UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, Western Division, }

F. L. Eaton and Henry J. Taylor, being duly sworn, depose and say and each for himself saith that he is worth one thousand dollars over and above all just debts, liabilities, and exemptions.

F. L. EATON.
HENRY J. TAYLOR.

Sworn to this 16th day of February, 1899, before me—

[SEAL.] E. A. BURGESS,
Notary Public within and for Woodbury County, State of Iowa.

The above bond and the sureties thereto approved this 20th day of February, 1899.

AMOS M. THAYER,
HENRY C. CALDWELL,
Circuit Judges.

Endorsed: No. 996. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and Combination Bridge Company, appellants, *vs.* F. Gordon Dexter *et al.*, appellees. Appeal bond. Filed Feb. 20, 1899. John D. Jordan, clerk.

And on the twentieth day of February, A. D. 1899, in the record of the proceedings of said circuit court of appeals is an order allowing appeal in said cause in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

MONDAY, *February* 20, 1899.

CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants, *vs.* F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees; United States of America, Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John W. Doane, Receivers, *et al.*, Appellees.	No. 996. Allowance of Appeal.

And now, on this 20th day of February, 1899, the above cause came on upon the hearing of the petitions of the Credits Commutation Company and the Combination Bridge Company for the allowance of appeals herein from the order or decree entered herein
220 at the December term, 1898, under date December 7, 1898, and now, in open court, at the same term thereof at which said order or decree complained of was so entered and rendered by this court, said appeals are hereby allowed and security for costs fixed at one thousand dollars ($1,000), and the bond therefor now on file is approved.

(Signed) HENRY C. CALDWELL,
AMOS M. THAYER,
Circuit Judges.

And on the fifteenth day of March, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals in said cause a citation, the original of which, with proof of service thereon, is hereto attached and herewith returned:

221 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and THE Combination Bridge Company, Appellants, *vs.* F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees; United States of America, Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, John Doane, Receivers, *et al.*, Appellees.	No. 996. Citation.

The United States of America to said appellees:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of March next, pursuant to a writ of appeal filed in

the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein The Credits Commutation Company and Combination Bridge Company are appellants and you are appellees, to show cause, if any there be, why the decree rendered against said appellants herein and in the circuit court of — United States for the district of Nebraska should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry C. Caldwell, judge of the United States circuit court of appeals for the eighth circuit, this 20th day of February, 1899.

HENRY C. CALDWELL,
Circuit Judge.

222 STATE OF NEW YORK, } ss:
County and City of New York, }

I served the hereto-annexed citation on Winslow S. Pierce by handing a copy of the same to him at number 120 Broadway, in the city of New York, State of New York.

BERT HANSON.

Subscribed and sworn to before me and in my presence this 9th day of March, 1899.

[Seal of Morris I. Price, Notary Public, New York County.]

MORRIS I. PRICE,
Notary Public in and for the City, County, and State of New York.

For service of citation on the United States, see admission of service by special counsel attached to the citation in the case of Credits Commutation Company *et al.*, appellants, *vs.* United States of America *et al.*

223 STATE OF NEBRASKA, } ss:
County of Douglas, }

I served the hereto-annexed citation on William R. Kelly by handing a true copy of the same to him, at the city of Omaha, in the State of Nebraska, on the 14th day of March, 1899.

E. A. BURGESS.

Subscribed and sworn to before me and in my presence this 14th day of March, 1899.

{ Notarial Seal of Francis J. Mieding, Douglas County, Nebraska. Commission Expires 4, 23, 1901. }

FRANCIS J. MIEDING,
Notary Public within and for Douglas County, Nebraska.

STATE OF NEBRASKA, } ss:
County of Lancaster, }

I served the hereto annexed citation on G. M. Lambertson by handing a true copy of the same to him, at the city of Lincoln, in the State of Nebraska, on the 13th day of March, 1899.

E. A. BURGESS.

Subscribed and sworn to before me and in my presence this 13th day of March, 1899.

{ Notarial Seal of Emma L. Frow, Lancaster County, Nebraska. Commission Expires May 21, 1900. }

EMMA L. FROW,
Notary Public within and for Lancaster County, Nebraska.

[Endorsed:] No. 996. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and Combination Bridge Company, appellants, *vs.* F. Gordon Dexter *et al.*, appellees. Citation. Filed Mar. 15, 1899. John D. Jordan, clerk.

224 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing two hundred and twenty-three pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in the case of The Credits Commutation Company and The Combination Bridge Company, appellants, *vs.* F. Gordon Dexter and Oliver Ames, Second, trustees, *et al.*, appellees, No. 996, December term, 1898, as fully as the same remain on file and of record in my office.

I further certify that the original citation, with proof of service thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this fifteenth day of March, A. D. 1899.

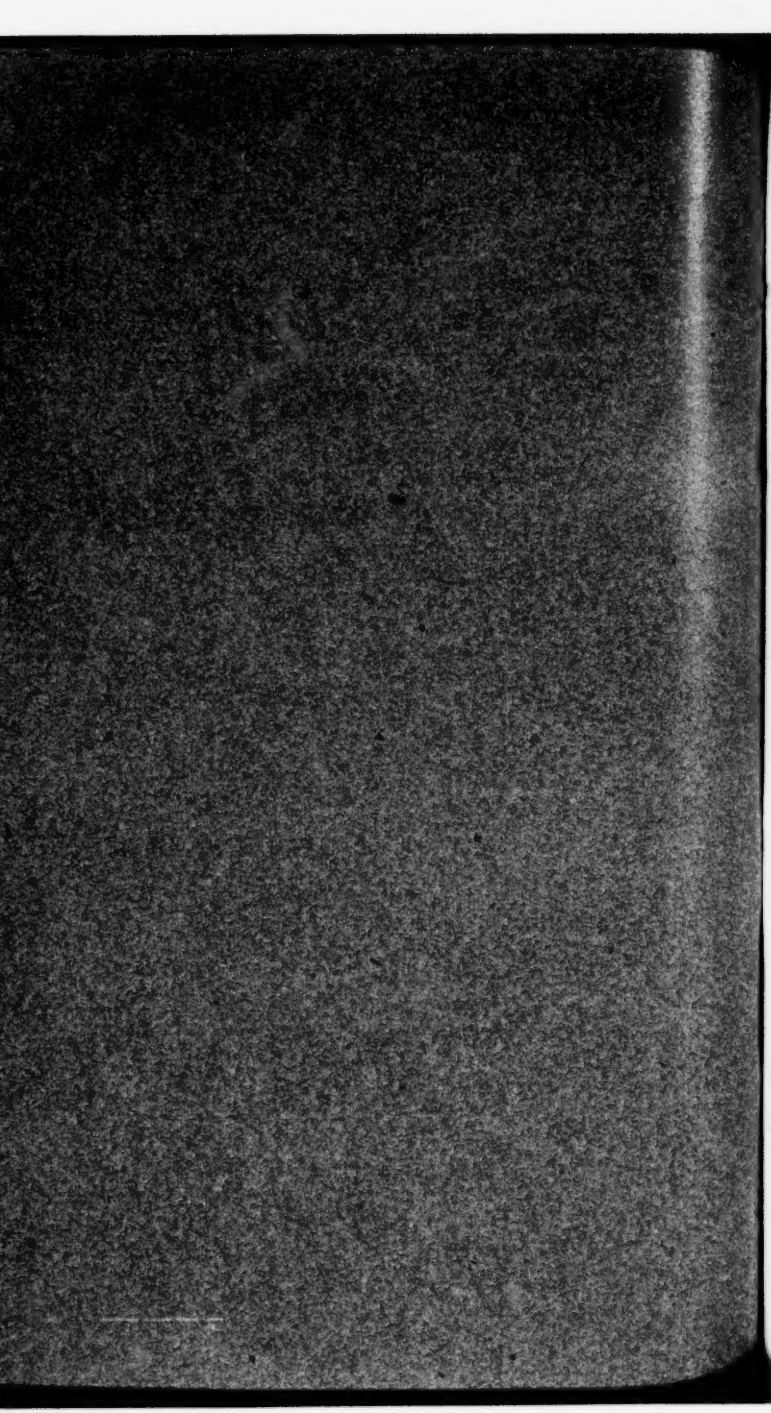
[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

{ Ten-cent U. S. internal-revenue stamp, canceled Mar. 15, 1899. John D. Jordan. }

Endorsed on cover: Case No. 17,327. U. S. C. C. of appeals, 8th circuit. Term No., 234. The Credits Commutation Company and The Combination Bridge Company, appellants, *vs.* F. Gordon Dexter and Oliver Ames, Second, trustees, *et al.* Filed March 18th, 1899.

[redacted]



(17,328.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 235.

THE CREDITS COMMUTATION COMPANY AND THE COMBINATION BRIDGE COMPANY, APPELLANTS,

vs.

OLIVER AMES, SECOND, AND SAMUEL CARR, EXECUTORS OF THE LAST WILL AND TESTAMENT OF FREDERICK L. AMES, DECEASED, ET AL.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

	Original.	Print.
Caption to transcript	*a*	1
Transcript from United States circuit court	1	1
Caption to transcript	1	1
Bill of complaint	1	1
Approximate result of the financial operations of the entire system for the eight months ending August 31, 1893, in comparison with the same months in 1892	37	32
Exhibit A—Statement showing funded debt of the Union Pacific Railway Company, Dec. 31, 1892	47	41
B—Schedule "A" annexed to and part of trust indenture of September 4, 1891	49	42
Answer of Union Pacific Railway Company	50	45
Petition of Credits Commutation Company for leave to intervene	53	47
Section 15 of the act of Congress of July 1, 1862	59	53

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 1, 1899.

	Original.	Print.
Section 14 of the act of Congress of July 1, 1862	62	56
Section 17 of the act of Congress of July 2, 1864	62	56
Section 15 of the act of Congress of July 2, 1864	64	58
Section 17 of the act of Congress of 1862	70	64
Section 12 of the act of Congress of 1862	71	65
Portion of act of Congress of March 3, 1869	71	65
Section 18 of the act of Congress of July 1, 1862	74	68
Section 10 of the act of Congress of May 7, 1878	79	73
Section 6 of the act of Congress of July 1, 1862	80	75
Portion of section 5 of the act of Congress of July 1, 1862	81	75
Section 11 of the act of Congress of May 7, 1878	81	75
Abstracts of argument of the railroad company in the case of United States *vs.* Union Pacific Railroad Company	81	75
Section 4 of the act of Congress of March 3, 1887	84	78
Portion of opinion of Supreme Court in the case of United States *vs.* Union Pacific Railroad Company, 91 U. S., 72	89	83
Portion of opinion of Supreme Court in the case of Union Pacific Railroad Company *vs.* United States, 99 U. S., 700	89	83
Portion of opinion in the case of United States *vs.* Western Union Telegraph Company, 50 Fed. Rep., 42	90	84
Remarks of Stuyvesant Fish before House committee	90	84
Portion of report of Senate Committee on Pacific Railroads	90	84
Portion of report of author of the commission bill introduced in the House of Representatives	91	85
Portion of report of the minority of the House committee	91	85
Portion of act of Congress of March 3, 1873	92	86
Portion of act of Congress of 1862 in respect to the lien of the Government bonds	98	94
Amendment of 1864, authorizing the first-mortgage bonds	98	94
Portion of decision of Supreme Court in Union Pacific Railway Company *vs.* United States, 99 U. S., 402	98	94
Portion of opinion of Supreme Court in Union Pacific Railway Company *vs.* United States, 99 U. S., 700	108	102
Portion of opinion of Supreme Court in United States *vs.* Union Pacific Railway Company, 160 U. S., 1	112	106
Portion of section 15 of the act of Congress of July 1, 1862	113	107
Section 6 of the act of Congress of June 19, 1878	114	108
Section 18 of the act of Congress of July 1, 1862	115	109
Arrangement between reorganization committee and Kuhn, Loeb & Company	122	116
Representation made to the stockholders to surrender stock to the reorganization committee	123	117
Representation made to bondholders and stockholders	123	117
Representation made by the reorganization committee to the security-holders	124	118
Remarks of Senator Brice before United States Senate committee	134	128
Portion of report of Senate committee of April 8, 1897	140	134
Portion of report of majority of House committee of February 11, 1897	140	134
Portion of report of the minority of the House committee	141	134
Order on respondents to show cause why Credits Commutation Company should not be permitted to intervene	151	145

	Original	Print.
Report of the attorney general to the Senate, January 23, 1897	155	149
Letter, Grover Cleveland to attorney general, January 12, 1897	155	149
Letter, attorney general to Louis Fitzgerald, chairman, January 18, 1897	157	150
Letter, Louis Fitzgerald, chairman, to attorney general, January 20, 1897	157	151
Letter, Louis Fitzgerald, chairman, to special assistant to attorney general, January 15, 1897	157	151
Amendments to petition of Credits Commutation Company for leave to intervene	159	153
Petition of Combination Bridge Company for leave to intervene	163	155
Order denying petitions for leave to intervene	165	156
Petition for appeal	166	159
Assignment of errors	168	161
Bond on appeal	170	161
Order allowing appeal	172	164
Citation	173	164
Admissions of service of citation	174	166
Clerk's certificate to transcript	176	167
Appearance of counsel for appellants	178	169
Mr. Hoadly for the United States	178	169
Mr. Cowin for the United States	179	169
Mr. Dillon and Mr. Kelly for the receivers	179	170
Mr. Lambertson for Union Pacific Railway Company and receivers	180	171
Proof of service of notice of motion to dismiss	181	171
Notice of motion to dismiss	181	172
Motion to dismiss	182	173
Notice and amended motion to dismiss	185	175
Certificate of clerk as to time of filing assignment of errors	188	176
Order: Cause submitted	190	177
Opinion of United States circuit court of appeals	190	178
Decree of United States circuit court of appeals	195	182
Petition for appeal	198	184
Assignment of errors	199	185
Bond on appeal	201	186
Order allowing appeal	203	188
Citation	205	188
Clerk's certificate to transcript	208	190

a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the December term, 1898, of said court, begun and held at the United States court-house, in the city of St. Louis, Missouri, on the first Monday in December, to wit, the fifth day of December, A. D. 1898, before the Honorable Henry C. Caldwell and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the ninth day of September, A. D. 1897, a transcript of record, pursuant to an appeal allowed by the circuit court of the United States for the district of Nebraska, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit; which said transcript of record is in the words and figures following, to wit:

1 Pleas before the Honorable Walter H. Sanborn, judge of the circuit court of the United States for the eighth judicial circuit, sitting in the circuit court of the United States for the district of Nebraska, within the said eighth judicial circuit, at the term of May, A. D. 1897.

Be it remembered that on the 9th day of October, 1893, bill of complaint was filed in the clerk's office of said circuit court, in the case of Oliver Ames, Second, *et al. vs.* The Union Pacific Railway Company *et al.*, which said bill is in the words and figures following, to wit:

Bill of Complaint.

Circuit Court of the United States for the Eighth Judicial District of Nebraska. In Equity.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors of the Last Will and Testament of Frederick L. Ames, Deceased, and Peter B. Wyckoff and Edwin F. Atkins, Complainants,

vs.

THE UNION PACIFIC RAILWAY COMPANY, THE ATCHISON, COLORADO and Pacific Railway Company, The Atchison, Jewell County and Western Railway Company, The Boulder Valley and Central City Wagon Road Company, The Bozeman Coal Company, The Callaway Improvement Company, The Carbon Cutoff Railway Company, The Central Branch Union Pacific Railroad Company, The Denver, Leadville and Gunnison Railway Company, The

Green River Water Works Company, The Junction City and Fort Kearney Railway Company, The Kansas Central Railroad Company, The Kansas City and Omaha Railroad Company, The Kearney and Black Hills Railway Company, The Laramie, North Park and Pacific Railroad and Telegraph Company, The Lawrence and Emporia Railway Company, The Loveland Pass Mining and Railroad Tunnel Company, The Montana Railway Company, The Morrison Stone, Lime, and Town Company, The Omaha and Republican Valley Railway Company, The Oregon Railway and Navigation Company, The Oregon Short Line and Utah Northern Railway Company, The St. Joseph and Grand Island Railroad Company, The Salina and Southwestern Railway Company, The Solomon Railroad Company, The Union Land Company,
2 The Union Pacific, Denver and Gulf Railway Company, The Union Pacific, Lincoln and Colorado Railway Company, and The Union Pacific Coal Company (Title of Original Bill of Complaint Amended as per Order of Court, October 16, 1893, by Interlineation of Names of Following Additional Defendants: The Cascade Railroad Company, The Columbia and Palouse Railroad Company, The Mill Creek Flume and Manufacturing Company, The Oregon Railway Extensions Company, The Walla Walla and Columbia River Railroad Company, The Washington and Idaho Railroad Company, The Wood River Improvement Company, The Echo and Park City Railway Company), Defendants.

To the honorable the judges of the said court, in equity sitting:

Your orators above named, suing for themselves and also for all other parties similarly situated who may desire to become complainants herein, bring this bill of complaint against the Union Pacific Railway Company; the Atchison, Colorado and Pacific Railway Company; the Atchison, Jewell County and Western Railroad Company; the Boulder Valley and Central City Wagon Road Company, the Bozeman Coal Company, the Callaway Improvement Company, the Carbon Cut-off Railway Company, the Central Branch Union Pacific Railroad Company; the Denver, Leadville and Gunnison Railway Company; the Green River Water Works Company, the Junction City and Fort Kearney Railway Company, the Kansas Central Railroad Company, the Kansas City and Omaha Railroad Company, Kearney and Black Hills Railway Company; the Laramie, North Park and Pacific Railroad and Telegraph Company; the Lawrence and Emporia Railway Company, the Loveland Pass Mining and Railroad Tunnel Company, the Montana Railway Company; the Morrison Stone, Lime, and Town Company; the Omaha and Republican Valley Railway Company, the Oregon Railway and Navigation Company, the Oregon Short Line and Utah Northern Railway Company, the St. Joseph and Grand Island Railroad Company, the Salina and Southwestern Railway Company, the Solomon Railroad Company, the Union

Land Company; the Union Pacific, Denver and Gulf Railway Company; the Union Pacific, Lincoln and Colorado Railway Company, and the Union Pacific Coal Company.

And thereupon your orators complain and say:

That Frederick L. Ames, late of the State of Massachusetts, and prior and up to the time of his decease a citizen of said State,
3 departed this life on or about the 13th day of September, 1893, leaving an estate both real and personal to be administered in the said State of Massachusetts, and also leaving a last will and testament duly executed; that Oliver Ames, 2d, and Samuel Carr are the executors named in the said will, and said last-named persons have been duly appointed as executors of the said last will and testament of the said Frederick L. Ames, deceased, by an order duly made by the probate court in and for the county of Bristol in the State of Massachusetts, and on the 19th day of September, 1893, said executors duly qualified and entered upon the performance of their duties as such executors. That as executors of Frederick L. Ames, late of Easton, in the State of Massachusetts, they are the holders and owners of more than 10,000 shares of the capital stock of the defendant The Union Pacific Railway Company, of more than 5,000 shares of the capital stock of the defendant The Oregon Short Line and Utah Northern Railway Company, of more than 5,000 shares of the capital stock of the defendant The Union Pacific, Denver and Gulf Railway Company, and of about 1,500 shares of the capital stock of the defendant The Oregon Railway and Navigation Company, and also as such executors the owners and holders of considerable amounts of collateral trust six per cent. bonds of the Union Pacific Railroad Company, of collateral trust three-year six per cent. notes of the Union Pacific Railway Company, of five per cent. bonds of the Union Pacific, Denver and Gulf Railway Company, of six per cent. bonds of the Ft. Worth and Denver City Railway Company, of six per cent. bonds of the Oregon Short Line Railway Company, of five per cent. bonds of the Oregon Short Line and Utah Northern Railway Company, of seven per cent. bonds of the Utah Southern Railway Company, and of six per cent. bonds of the Idaho Central Railroad Company, all of which were held and owned by said Frederick L. Ames at the time of his decease. The said several instruments and obligations under and by virtue of which said notes and bonds were issued and are outstanding are more specifically described hereinafter. And complainants beg leave hereafter upon any hearing of this cause to make proof thereof when the same may become material or necessary.

Your orators further aver that the complainant, Peter B. Wyckoff, is the holder and owner of numerous shares of stock of the said Union Pacific Railway Company, and the complainant, Edwin F. Atkins, is the owner of numerous shares of the said Union Pacific Railway Company, and of the Union Pacific, Denver and Gulf Company, and is also the holder and owner of certain bonds and securities of certain of the defendant companies named above, the precise character and amounts of each of which your orators stand

willing and ready fully to show to the court upon any hear-
4 ing herein. And your orators aver that the said Oliver Ames, 2d, and the said Samuel Carr and the said Edwin F. Atkins are all of them residents and citizens of the State of Massachusetts, and the said Peter B. Wyckoff is a resident and citizen of the State of New York.

Second. That the defendant The Union Pacific Railway Company is a corporation created by and existing under certain laws of the United States, to wit, an act of Congress entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July 1st, 1862; also an act of Congress amendatory thereof, approved July 2d, 1864, and other acts of the Congress of the United States amendatory and supplemental thereto.

The said Union Pacific Railway Company was formed on or about the 24th day of January, 1880, under and by virtue of the powers and provisions contained in the said several acts of Congress by the consolidation of the Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company; each of said railway and telegraph companies being named and described in said acts; and the said Union Pacific Railway Company, so created by consolidation, as aforesaid, thereupon became the successor of each of the said constituent companies, and thereby became vested with all the rights, titles, interests, properties and franchises of each of said constituent companies. The said Union Pacific Railway Company, as well also as the Union Pacific Railroad Company, were, by the said several acts of Congress authorized to construct, maintain and operate a railroad and telegraph line from the State of Iowa in a westerly direction through the States of Nebraska, Wyoming, and into the Territory of Utah; and the said Kansas Pacific Railway Company was authorized to construct a line of railroad from Missouri in a westerly direction through the State of Kansas and into the State of Colorado to the city of Denver, and the said Denver Pacific Railway and Telegraph Company was authorized to construct a railroad from the said city of Denver through the States of Colorado and Wyoming to Cheyenne in said last-named State. The said Union Pacific Railway Company resides in and has and maintains a principal place of business at Omaha, in the State and district of Nebraska. And your orators beg leave to refer to each and every of the said acts of Congress as if incorporated herein.

The defendant The Atchison, Colorado and Pacific Railroad Com-
pany is a corporation formed and existing under and by
5 virtue of the laws of the State of Kansas, owning a line of railroad in said State, and is a citizen of said State of Kansas.

The Atchison, Jewell County and Western Railroad Company is an incorporation organized and existing under and by virtue of the laws of the State of Kansas, owning a line of railroad therein and is a citizen of said State.

The Boulder Valley and Central City Wagon Road Company is an incorporation organized and existing under and by virtue of the laws of the State of Colorado, owning a roadway therein, and is a citizen of said State.

The Bozeman Coal Company is an incorporation organized and existing under and by virtue of the laws of the State of Montana, owning coal mines and property therein, and is a citizen of said State.

The Callaway Improvement Company is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, engaged in railway construction and real-estate enterprises therein, and is a citizen of said State.

The Carbon Cut-off Railway Company is an incorporation of the State of Wyoming, owning a line of railroad therein, and is a citizen of said State.

The Central Branch Union Pacific Railroad Company is an incorporation organized and existing under and by virtue of the laws of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Denver, Leadville and Gunnison Railway Company is an incorporation of the State of Colorado, owning a line of railroad therein, and is a citizen of said State.

The Green River Water Works Company is an incorporation of the State of Wyoming, owning a water-supply plant and works therein, and is a citizen of said State.

The Junction City and Fort Kearney Railway Company is an incorporation of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Kansas Central Railroad Company is a corporation organized and existing under the laws of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Kansas City and Omaha Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, owning a line of railroad therein, and is a citizen of said State.

The Kearney and Black Hills Railway Company is a corporation organized and existing under and by virtue of the laws of
6 the State of Nebraska, owning a line of railroad therein, and is a citizen of said State.

The Laramie, North Park and Pacific Railroad and Telegraph Company is a corporation organized and existing under and by virtue of the laws of the State of Wyoming, owning a line of railroad therein, and is a citizen of said State.

The Lawrence and Emporia Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Loveland Pass Mining and Railroad Tunnel Company is a corporation organized and existing under and by virtue of the laws of the State of Colorado, engaged in the construction of a railroad and mining tunnel therein, and is a citizen of said State.

The Montana Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Montana, owning a line of railroad therein, and is a citizen of said State.

The Morrison Stone, Lime and Town Company is a corporation organized and existing under and by virtue of the laws of the State of Colorado, engaged in a general business therein, and is (—) citizen of said State.

The Omaha and Republican Valley Railway Company is a corporation formed by the consolidation of certain other corporations under and by virtue of the laws of the State of Nebraska, as well as under and by virtue of the laws of the State of Kansas. The said railway company owns a line of railroad in both of said States, and is a citizen of the State of Nebraska, as well also as the State of Kansas.

The Oregon Railway and Navigation Company is a corporation organized and existing under and by virtue of the laws of the State of Oregon, owning a line of railroad therein, and is a citizen of said State.

The Oregon Short Line and Utah Northern Railway Company is a corporation formed by the consolidation of certain other corporations under and by virtue of the laws of the State of Wyoming, as well as by virtue of certain acts of the Congress of the United States owning a line of railroad in the States of Wyoming, Idaho and Montana and in the Territory of Utah, and said consolidated corporation so formed, organized and existing as aforesaid is a citizen of the State of Wyoming.

The St. Joseph and Grand Island Railway Company is a corporation formed and existing under and by virtue of the laws of
7 the State of Kansas, reincorporated also as a corporation under and by virtue of the laws of the State of Nebraska, owning a line of railroad in both of said States. The said corporation is a citizen of the State of Kansas, as well, also, as a citizen of the State of Nebraska.

The Salina and Southwestern Railway Company is a corporation formed by the consolidation of certain other corporations, under and by virtue of the laws of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Solomon Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Union Land Company is a corporation organized and existing under and by virtue of the laws of the State of Nebraska, engaged in a general land business therein, and is a citizen of said State.

The Union Pacific, Denver and Gulf Railway Company is a corporation formed by the consolidation of certain other corporations under and by virtue of the laws of the State of Colorado as well as under and by virtue of the laws of the State of Wyoming. Said consolidated corporation owns a line of railroad in both of said States, as well, also, as in the Territory of New Mexico, and is a citizen of the State of Colorado, and a citizen of the State of Wyoming.

The Union Pacific, Lincoln and Colorado Railway Company is a corporation formed by the consolidation of certain other corporations under and by virtue of the laws of the State of Kansas, owning a line of railroad therein, and is a citizen of said State.

The Union Pacific Coal Company is a corporation formed and existing under and by virtue of the laws of the State of Wyoming, engaged in a general coal-mining and sales business in said State, as well also in Colorado and Utah, and is a citizen of said State of Wyoming.

Your orators in alleging the incorporation, organization and citizenship of each of the said parties defendant as aforesaid, further say that the manner and character of operation of the said several lines of railroad owned by the said several defendants is more fully and specifically set out and described hereinafter.

Third. The defendant The Union Pacific Railway Company is a corporation created and existing under the laws of the United States, to wit, an act of Congress of the United States, entitled "An
8 act to aid in the construction of a railroad and telegraph line from the Missouri river to the Pacific ocean, and to secure to the Government the use of the same for postal, military and other purposes," approved July 1, 1862, and an act of Congress approved July 2d, 1864, being an act to amend the above-mentioned act, and other acts and amendments to the said acts enacted by the Congress of the United States. The said Union Pacific Railway Company is a consolidated corporation formed on or about January 24th, 1880, by articles of union and consolidation entered into between the Union Pacific Railroad Company, the Kansas Pacific Railway Company and the Denver Pacific Railway and Telegraph Company, created or mentioned and described in and by the aforesaid acts of Congress. The said consolidated corporation, to wit, the Union Pacific Railway Company, owns a line of railway extending from Council Bluffs, in the State of Iowa, westerly through the States of Nebraska and Wyoming into the Territory of Utah to Ogden, a distance of about 1,042 miles, and also a certain line of railway extending from Kansas City in the State of Missouri, westerly through the State of Kansas and into the State of Colorado to Denver, a distance of about 639 miles; and also a certain line of railway extending from Denver, in the State of Colorado, in a northerly direction to Cheyenne, in the State of Wyoming, a distance of about 106 miles; together with certain terminal extensions and spur tracks used in connection therewith, making a total mileage of 1,829 miles or thereabouts. Your orators beg leave to refer to each and all of the said act of Congress, and all acts of Congress relating to the said railroads, the same as if incorporated herein.

Fourth. The defendant The Union Pacific Railway Company is also the owner of a large amount in value of the shares of stock and bonds of various corporations owning branch or connecting railway and telegraph lines, through the ownership whereof, and by contracts and arrangements wherewith, it is enabled to and does control the business and property of the said corporations, as hereinafter

stated, to the great advantage of itself and its creditors and security-holders.

Your orators state that the said constituent companies which formed the said defendant company The Union Pacific Railway Company prior to said consolidation, and the Union Pacific Railway Company, subsequent to said consolidation, with a view to increase their traffic and business and to protect the value of their property and franchises, invested their earnings or other means in the bonds and shares of certain connecting railroad companies in Iowa, Nebraska, Missouri, Kansas, Colorado, Wyoming, Utah and other States; that such investments were made with the assent of
9 the Government directors and the United States auditor and commissioner of railroads, and were regularly reported by the last-named officers to the Congress of the United States. In pursuance of this policy, and for the purposes aforesaid, the defendant The Union Pacific Railway Company owns, controls or operates, as hereinafter stated, the following-named roads which connect with the said Union Pacific Railway Company, are tributary to it and form part of its system of railways known as the Union Pacific system of railways, to wit:

1. The railroad of the Omaha and Republican Valley Railway Company, situated in the States of Nebraska and Kansas, having a total mileage of 482.05 miles. The capital stock of said Omaha and Republican Valley Railway Company now issued and outstanding is $2,401,023.77, all of which is owned by the said Union Pacific Railway Company, and is now pledged under a certain trust indenture of September 4th, 1891, hereinafter more specifically referred to and described. The Omaha and Republican Valley Railroad Company, which was merged into and became part of the said Omaha and Republican Valley Railway Company by consolidation, as hereinbefore stated, issued and disposed of its mortgage bonds dated July 1st, 1879, due July 1st, 1909, in the sum of $1,559,000, with interest at the rate of seven per cent., payable in January and July. The trustees named in the said mortgage are Peter B. Wyckoff and Benjamin F. Ham. And the said Omaha and Republican Valley Railway Company issued and disposed of its consolidated first-mortgage bonds to the amount of $3,136,000, dated February 15th, 1887, due March 1st, 1927, interest at the rate of five per cent. The trustee named in said mortgage is the American Loan and Trust Company of Boston. And also issued and disposed of its extension first-mortgage bonds in the sum of $1,246,000, dated May 1st, 1887, due May 1st, 1927, interest five per cent. The truestee named in said mortgage is the American Loan and Trust Company of Boston. Of the above-mentioned bonds there are pledged in the six per cent. collateral trust of the Union Pacific Railroad Company of July 1st, 1879, $887,000 of the Omaha and Republican Valley Railroad Company bonds, and in the five per cent. collateral trust of the Union Pacific Railway Company of April 2d, 1883, hereinafter mentioned, $589,000 of the Omaha and Republican Valley Railroad Company bonds, and $1,859,000 of the Omaha and Republican Valley Railway Company said consolidated first-mortgage

bonds. The said American Loan and Trust Company of Boston, trustee for certain mortgage creditors of the Kansas Pacific Railway Company, holds $636,000 of said Omaha and Republican
10 Valley Railway Company consolidated first-mortgage bonds. The trustees under the said trust indenture of September 4th, 1891, hold $41,000 of Omaha and Republican Valley Railroad Company bonds, $460,000 Omaha and Republican Valley Railway Company consolidated first-mortgage bonds and $1,246,000 of Omaha and Republican Valley Railway Company extension bonds. All of the said stocks and bonds so pledged as aforesaid are the absolute property of the Union Pacific Railway Company, subject to the trusts created by the said several indentures whereby the same were pledged, as aforesaid; the voting power on said stocks being in the Union Pacific Railway Company while it is not in default under the aforesaid indentures whereby the said stocks were pledged.

2. The railroad of the Union Pacific, Denver and Gulf Railway Company, including the Fort Worth and Denver City Railway Company and the Pan-Handle Company situate in the States of Colorado, Wyoming and Texas and in the Territory of New Mexico the total mileage of the roads owned and operated under contract and trackage rights is 1,463.23 miles.

The total amount of Union Pacific, Denver and Gulf Railway Company consolidated mortgage bonds, issued and outstanding, is $15,714,000, of which the Union Pacific Railway Company owns $7,262,000. Of the bonds thus owned, $7,189,000 are held by the trustees under the trust indenture of September 4, 1891, and $73,000 are held in the trust created for the benefit of the mortgage creditors of the Kansas Pacific Railway Company.

In addition to the above bonds, the Union Pacific Railway Company owns $4,719,000 in the first-mortgage seven per cent. bonds of the Colorado Central Railroad Company, one of the constituent companies forming part of the Union Pacific, Denver and Gulf Railway Company. Of these bonds, $1,795,000 are held in the Union Pacific six per cent. collateral trust, $1,202,000 in the five per cent. collateral trust, $1,392,000 are held by the trustees under the trust indenture of September 4, 1891, and $197,000 are in the trust created for the benefit of the mortgage creditors of the Kansas Pacific Railway Company.

The Union Pacific Railway Company also owns $13,251,882 of a total issue of $32,634,482 Union Pacific, Denver and Gulf stock. The stock thus owned is held by the trustees under the trust indenture of September 4, 1891.

The Union Pacific, Denver and Gulf Railway Company owns $944,000 of its own consolidated first-mortgage bonds, $65,000 Colorado Central Railroad Company first mortgage seven per cent. bonds, $101,000 of the Union Pacific Coal Company first-
11 mortgage five per cent. bonds, and $100,700 of the capital stock of the Union Pacific Coal Company. These bonds and stock, excepting the Colorado Central bonds, were pledged with the Union Pacific Railway Company as collateral for advances made by that company for account of this company, with the power in

the Union Pacific Railway Company to rehypothecate or sell the same, and they have been deposited by that company with the trustees under the trust indenture of September 4, 1891.

The Union Pacific, Denver and Gulf Railway Co. owns $3,406,800 of its own stock, and $7,766,000 of the capital stock of $9,375,000 of the Fort Worth and Denver City Railway Co. It also owns $218,000 Pan-Handle Railway Co. first-mortgage five per cent. bonds of a total issue of $225,000; and $160,000 Fort Worth and Denver City Railway Co. equipment trust five per cent. bonds, all that are outstanding; and $5,000 Fort Worth and Denver City Railway Co. six per cent. bonds. The Pan-Handle and Fort Worth and Denver City Companies' bonds thus owned are held by the trustee of the Union Pacific, Denver and Gulf Railway Co. consolidated mortgage as part security for the bonds issued thereunder.

All of the said stocks and bonds so pledged as aforesaid are the absolute property of the Union Pacific Railway Company, subject to the trusts created by the said several indentures whereby the same were pledged, as aforesaid; the voting power on said stocks being in the Union Pacific Railway Company while it is not in default under the aforesaid indentures whereby the said stocks were pledged.

3. The railroad of the consolidated railway company known as the Oregon Short Line and the Utah Northern Railroad Company and its leased and operated lines, situated in the States of Wyoming, Idaho, Montana, Nevada and Oregon, and in the Territory of Utah. Said company has constructed and acquired or owns 1,424 84 miles of railroads, and operates under lease the railway of the Oregon Railway and Navigation Company, 1,059.33 miles, making a total of 2,484.17 miles of owned, leased and operated lines.

The stock of the Oregon Short Line and Utah Northern Railway Co. is limited to $27,000,000. On December 31, 1892, the amount outstanding, including the stock of constituent companies not then exchanged, was $26,244,853.32, of which the Union Pacific Railway Co. owned $15,116,703.33. All of the stock owned by the Union Pacific Railway Co., excepting $1,000 in amount, is held by the trustees under the trust indenture of September 4, 1891.

The Oregon Short Line and Utah Northern Railway Co. owns $14,508,200, out of a total issue of $24,000,000 of the stock
12 of the Oregon Railway and Navigation Co. Of the stock thus owned $13,000,000 is held by the trustee under the collateral trust indenture of the Oregon Short Line and Utah Northern Railway Co, and $487,200 is held by the same trustee as an investment for the sinking fund established thereunder. The balance of the stock thus owned ($1,021,000) is pledged with the Union Pacific Railway Company, with power in that company to rehypothecate or sell the same. The stock thus pledged with the Union Pacific Railway Company is deposited with the trustees under that company's trust indenture of September 4, 1891.

The amount of collateral trust bonds outstanding on December 31, 1891, was $13,000,000. Of the bonds thus outstanding, the Union Pacific Railway Company owned $2,837,500, which are held

by the trustees under that company's trust indenture of September 4, 1891.

The amount of Oregon Short Line and Utah Northern Railway Co. consolidated first-mortgage bonds outstanding on December 31, 1892, was $11,024,000. Of these the Union Pacific Railway Co. owns $932,000. That company also owns $4,420,000 in Utah and Northern Railway Co. first-mortgage seven per cent. bonds; $418,000 in Utah Southern Railway Co. first-mortgage seven per cent. bonds; $982,000 in Utah Southern Railroad extension first-mortgage seven per cent. bonds; and $85,000 in Idaho Central Railway Co. first-mortgage six per cent. bonds.

The Oregon Short Line and Utah Northern Railway Co. owns the following bonds of its own issue:

Oregon Short Line and Utah Northern Railway Co. consolidated 5 per cent. bonds	$1,814,000
Idaho Central Railway Co. first-mortgage 6 per cent. bonds	1,000
Utah Central Railway Co. first-mortgage 6 per cent. bonds	1,000

At the close of 1892, the Oregon Short Line and Utah Northern Railway Co. was indebted to the Union Pacific Railway Co. in the sum of $4,066,500.47. Against this, it had pledged with that company, with the power in the Union Pacific to rehypothecate or sell, $1,750,000 in Oregon Short Line and Utah Northern Railway Co. consolidated five per cent. bonds; $1,021,000 in Oregon Railway and Navigation Co. stock; 411,000 in Union Pacific Coal Co. first-mortgage five per cent. bonds, and $461,400 in Union Pacific Coal Co. stock. The Oregon Short Line and Utah Northern Railway Co. had also pledged with the Union Pacific Railway Co., with the power in that company to rehypothecate or sell, $712,000 in
13 Oregon Railway and Navigation Co. consolidated mortgage five per cent. bonds, and $1,057,000 in Oregon Railway and Navigation Co. collateral trust five per cent. bonds. The bonds were owned by the Oregon Railway and Navigation Co., which company was in turn indebted to the Oregon Short Line and Utah Northern Railway Co. for moneys advanced in the construction of the Washington and Idaho railroad, the road of the Oregon Railway Extensions Co., and for additional equipment furnished for, and betterments made on, the lines of the Oregon Railway and Navigation Co. The bonds and stock thus pledged with the Union Pacific Railway Co. were by that company deposited with the trustees under the trust indenture of September 4, 1891.

All of the said stocks and bonds so pledged, as aforesaid, are the absolute property of the Union Pacific Railway Co., subject to the trusts created by the said several indentures, whereby the same were pledged as aforesaid; the voting power on said stocks being in the Union Pacific Railway Co. while it is not in default under the aforesaid indentures, whereby the said stocks were pledged.

The Oregon Railway and Navigation Co. under an indenture of lease dated January 1, 1887, leased its said railroads to the Oregon

Short Line Railway Company, which is now a constituent company of the said Oregon Short Line and Utah Northern Railway Company. The Union Pacific Railway Company was a party to the said indenture. Said indenture was subsequently, in some respects, modified. On or about December 6th, 1889, the Oregon Short Line & Utah Northern Railway Company entered into a perpetual agreement with the Union Pacific Railway Company granting to it certain perpetual rights, privileges and easements, and also agreeing with it for the interchange of business, in consideration whereof the Union Pacific Railway Company guaranteed the obligations of the Oregon Short Line and Utah Northern Railway Company, as hereinafter more fully stated. By the provisions of said lease and traffic agreements, and by reason of ownership of stock, the railroad of the said Oregon Railway and Navigation Company is controlled and operated by the Union Pacific Railway Company as part of its system of railroads. The said lease of the Oregon Railway and Navigation Company to the said Oregon Short Line Railway Company includes the railroads of the Oregon Extension Company, situated in the States of Washington and Oregon, 68.73 miles in length, which was itself leased to the Oregon Railway and Navigation Company on January 8th, 1890, for a term of ninety-seven years. The said lease of the said Oregon Railway and Navigation Company to the Oregon Short Line Company also covered
14 the railroad of the Washington and Idaho Railroad Company, situated in the States of Washington and Idaho, 154.21 miles in length, which was itself leased to the Oregon Railway & Navigation Company on January 8th, 1890, for the term of ninety-seven years, and said last-two-mentioned railroads are in the possession of and controlled and operated by the Union Pacific Railway Company as a part of its system as hereinbefore stated.

Also the railroad of the Cascade Railroad Company, situated in the State of Washington, six miles in length. This road is operated under a lease to the Oregon Railway and Navigation Company, which said lease was assigned to the Oregon Short Line Railway Company on May 10th, 1887, of which last-named company the Oregon and Short Line and Utah Northern Railroad Company is successor by consolidation as hereinbefore stated.

Also the railroad of the Columbia and Palouse Railroad Company, 144.81 miles in length, situated in the States of Washington and Idaho. Said railroad is operated under a lease to the Oregon Railway and Navigation Company, which said lease was assigned to the Oregon Short Line Railway Company May 10th, 1887.

Also the narrow-gauge railroad of the Mill Creek Flume and Manufacturing Company, 13.41 miles in length, situate in the State of Washington. This railroad is owned by the Oregon Railway and Navigation Company, and is subject to and operated under the terms of the lease from the said Oregon Railway and Navigation Company to the said Oregon Short Line and Utah Northern Railway Company, hereinbefore described.

Also the railroad of the Walla Walla and Columbia River Railroad Company, 35.52 miles in length, situate in the State of Wash-

ington. This road is held and operated under the lease to the Oregon Railway and Navigation Company, which said lease was assigned by the last named company to the Oregon Short Line Railway Company, on May 10th, 1887. All of which said railroads under lease, as hereinbefore stated, to the said Oregon Railway and Navigation Company are subject to the terms and conditions of the general lease, hereinbefore referred to, executed by the said Oregon Railway and Navigation Company to the said Oregon Short Line Company, and all of said roads are operated and controlled by the Union Pacific Railway Company by virtue of its ownership of the stock of the said Oregon Short Line and Utah *and* Northern Railway Company, as well also as by virtue of the said several leases and instruments hereinbefore more specifically described.

Also, the Northern Pacific Terminal Company of Oregon. The issued capital stock of this company is $3,000,000, divided into 30,000 shares. Nine shares are owned by directors, and the remainder is held by the Central Trust Company, of New York, in trust for the Oregon Railway and Navigation Company, the Northern Pacific Railroad Company and the Oregon and California Railroad Company, which said last-named company is operated and controlled by the Southern Pacific Railroad Company. This terminal company has issued its fifty-year six per cent. first-mortgage bonds, dated January 1st, 1882, to the amount of $3,600,000; and the said Oregon Railway and Navigation Company and the said Oregon Short Line and Utah Northern Railway Company have entered into an agreement with the other owners of the stock of the said terminal company by which the said Oregon Short Line and Utah Northern Railway Company as lessee of the Oregon Railway and Navigation Company is bound to pay its proportion of the interest and sinking-fund charges on said bonds. The property of this terminal company is now occupied and used by the said Oregon Short Line and Utah Northern Railway Company as lessee of the said Oregon Railway and Navigation Company under and by virtue of the terms of the leases and agreements hereinbefore more specifically referred to.

4. The railroad of the Union Pacific, Lincoln and Colorado Railway Company, 225.35 miles in length, in the State of Kansas. There is outstanding $1,997,800 of capital stock, all of which is owned by the defendant The Union Pacific Railway Company, and is held in pledge under the said trust indenture of September 4th, 1891. Said company has issued its first-mortgage five per cent. bonds, due April 1st, 1918, the same being secured by a mortgage to the American Loan and Trust Company of Boston, trustee, dated August 1st, 1888, delivered November 7th, 1888, for $4,445,000. The American Loan and Trust Company, trustee for the benefit of the mortgage creditors of the Kansas Pacific Railway Company, holds $74,000 of said last-mentioned bonds, the balance of which are afloat. And by the terms of an agreement between the said Union Pacific, Lincoln and Colorado Railway Company and the Union Pacific Railway Company, dated August 1st, 1888, delivered November 7th, 1888, the first-named company agreed to work its railway as a continuous line with the Union Pacific Railway Company, the Union Pacific

Railway Company entering into a reciprocal engagement to work its line as a continuous line with that of the Union Pacific, Lincoln and Colorado Railway Company; in consideration thereof, and of the other provisions of the said agreement, the Union Pacific Railway Company agreed in substance that the revenues of the
16 said Union Pacific, Lincoln and Colorado Railway Company should be sufficient to meet the interest on the said first-mortgage bonds. The Union Pacific railway has guaranteed the payment of the principal and interest of $4,445,000 of the first-mortgage bonds of the Union Pacific, Lincoln and Colorado Railway Company. It was further agreed that to secure the Union Pacific Railway Company against loss by reason of its compliance with the terms of said contract, the Union Pacific, Lincoln and Colorado Company should execute an indenture of mortgage of its railway and properties to the Union Pacific Railway Company, which last-named company it was covenanted should have the rights of a mortgagee in possession for its security and benefit; and it was further agreed that until such indenture should be executed the Union Pacific Company might enter into the possession of the railroad of the Union Pacific, Lincoln and Colorado Company to the end that it might work the same as provided in the said agreement. Your orators allege on information and belief that the said mortgage was never made, but that the Union Pacific Company took possession of the railroads of the said Union Pacific, Lincoln and Colorado Railway Company, and is now in possession thereof, and has operated, and is still operating the same.

5. The railroad of the Kansas Central Railroad Company, situate in the State of Kansas, 169.49 miles in length. This company issued its capital stock to the amount of $1,348,000; it also executed a first mortgage to Frederick L. Ames, trustee, dated April 22d, 1881, due April 1st, 1911, for $1,348,000. The Union Pacific Railway Company owns all the bonds of this company, excepting one bond of a thousand dollars, and owns $1,313,400 of the said capital stock. The bonds and stock thus owned by the Union Pacific Railway Company are held by the trustees under the trust indenture of September 4th, 1891.

6. The railroad of the Carbon Cut-off Railway Company, situate in the State of Wyoming, 19.17 miles in length. This company issued its capital stock to the amount of $280,000, all of which is owned by the Union Pacific Railway Company, and of which $220,000 is held by the trustees under the trust indenture of September 4th, 1891. There is no funded debt.

7. The railroad of the Denver, Leadville and Gunnison Railway Company in the State of Colorado, 324.72 miles. This company issued capital stock of $3,000,000, and also executed its first mortgage, dated August 1st, 1889, to the American Loan and Trust Company of Boston, trustee, to secure $2,308,000, four and one-half per cent.
bonds. The Union Pacific Railway Company owns all of
17 the stock of this company, which is held by the trustees under the trust indenture of September 4th, 1891. It also owns all of the said first-mortgage bonds of said company, of which $2,262,000

are held in the Union Pacific Railway Company's four and one half per cent. collateral trust as security for $2,037,000 of the Union Pacific Railway Company's collateral trust four and one-half per cent. bonds, $23,000 of said bonds are held by the trustees under the trust indenture of September 4th, 1891.

8. The railroad of the Echo and Park City Railway Company, situate in the Territory of Utah, 30.10 miles in length. This company issued capital stock to the amount of $480,000, also its first-mortgage six per cent. bonds, dated July 1st, 1881, due July 1st, 1911, secured by mortgage to Peter B. Wyckoff and James M. Ham, trustees. The Union Pacific Railway Company owns the entire capital stock and all the bonds of this company, all of which stock and bonds are held by the trustees under the trust indenture of September 4th, 1891.

9. The railroad of the Junction City and Fort Kearney Railway Company, in the State of Kansas, 88 miles in length. This company issued capital stock of $1,056,100; also its first-mortgage seven per cent. bonds dated April 1st, 1873, due April 1st, 1903, to Adolphus Meier and Lewis H. Meyer, trustees, for $970,000; also, its first-mortgage branch five per cent. bonds, dated September 1st, 1884, due December 1st, 1902, to the American Loan and Trust Company, of Boston, trustee, for $171,000. The Union Pacific Railway Company owns $764,000 of the capital stock of this company, of which $720,000 is held by the trustees of the Kansas Pacific consolidated mortgage of May 1st, 1879, and the balance is held by the trustees under the trust indenture of September 4th, 1891. The said seven per cent. bonds are all held by the said Kansas Pacific consolidated mortgage trustees. The said American Loan and Trust Company, trustee, holds the entire issue of the five per cent. bonds in the sinking fund for the further security of mortgage creditors of the Kansas Pacific Railway Company.

10. The railroad of the Laramie, North Park and Pacific Railroad and Telegraph Company, situate in the State of Wyoming, 13.36 miles in length. This company issued capital stock of $66,500. It has no funded debt. The Union Pacific Railway Company owns the entire capital stock of said company, which is held by the trustees under the trust indenture of September 4th, 1891.

11. The railroad of the Salina and Southwestern Railway Company, situate in the State of Kansas, 35.47 miles in length.
18 This company issued its capital stock for $288,400; also its first-mortgage six per cent. bonds dated January 25th, 1882, due January 1st, 1912, to John F. Dillon and Peter B. Wyckoff, trustees, for $540,000, all of which bonds are held by the trustees of the Kansas Pacific consolidated mortgage of May 1st, 1879. Of the said capital stock the Union Pacific Railway Company owns $231,700, which is held by the trustees under the said trust indenture of September 4th, 1891.

12. The railroad of the Solomon Railroad Company, situate in the State of Kansas, 57.04 miles. This company issued capital stock of $1,108,850; also, its first-mortgage six per cent. bonds, dated May 1st, 1878, due May 1st, 1908, to C. S. Greeley, trustee, for

$575,000. Of the said capital stock, $1,000,500 is held in the said trust of Kansas Pacific consolidated mortgage of May 1st, 1879, and all of its first-mortgage six per cent. bonds.

13. The railroad of the St. Joseph and Grand Island Railroad Company, situated in the States of Missouri, Kansas and Nebraska, extending from St. Joseph, Missouri, to Grand Island, 251.06 miles. This company issued capital stock to the amount of $4,551,100; also first-mortgage six per cent. bonds, dated July 1st, 1885, due May 1st, 1925, to the Central Trust Company of New York, trustee, for $6,998,000; also, its second-mortgage five per cent. income bonds, dated July 1st, 1885, due July 1st, 1925, to J. H. Benedict, Isaac H. Bromley and F. K. Pendleton, trustees, for $1,679,000. The Union Pacific Railway Company owns $2,301,500 of the capital stock of this company, which is held by the trustees under the trust indenture of September 4th, 1891. The St. Joseph and Grand Island Company owns $1,822,500 of the capital stock of the Kansas City and Omaha Railroad Company, hereinafter referred to; also $125,000 of the St. Joseph Terminal Railroad Company's stock, and also $1,000 in the St. Joseph Union Depot Company's stock, each of which said companies is hereinafter more specifically referred to.

The railroad of the Kansas City and Omaha Railroad Company, promoted by and connecting with the St. Joseph and Grand Island railroad, situate in the State of Nebraska, 193.68 miles in length. This company issued capital stock of $4,408,100; also issued its first-mortgage five per cent. bonds, dated January 1st, 1887, due January 1st, 1927, to the Central Trust Company of New York, trustee, for $2,713,000. The Union Pacific Railway Company owns $1,595,500 of said bonds and $1,725,375 of the said stock, and the St. Joseph and Grand Island Railway Company owns $1,822,500 of the said stock. The bonds and stock owned by the Union Pacific Railway Company
19 are held by the trustees under the trust indenture of September 4th, 1891. On the 1st day of July, 1885, the St. Joseph and Grand Island Railroad Company entered into a contract with the Union Pacific Railway Company, and on the 1st day of January, 1887, the Kansas City and Omaha Railroad Company, of the first part, the St. Joseph and Grand Island Railroad Company, of the second part, and the Union Pacific Railway Company, of the third part, entered into a contract; and by the terms and provisions of the said two last-mentioned contracts, the respective railroads of the said companies were to be operated in connection with the Union Pacific and as a part of its system, and certain rights and privileges were granted to the Union Pacific Railway Company. The said Union Pacific Railway Company, in consideration thereof, endorsed the first-mortgage bonds of the St. Joseph and Grand Island Railroad Company substantially as follows: "The Union Pacific Railway Company hereby guarantees the punctual payment of the interest hereon (meaning the said bonds), subject only to the conditions of an agreement made with the St. Joseph and Grand Island Railroad Company, dated July 1st, 1885." Under the provisions of said contract—January 1st, 1887—the Union Pacific

Railway Company and the St. Joseph and Grand Island Railroad Company jointly and severally guaranteed the punctual payment of the interest on the first-mortgage bonds of the said Kansas City and Omaha Railroad Company, subject only to the conditions of the said agreement dated January 1st, 1887. Under and by virtue of the terms of the said two contracts and the consent of the said two last-named companies and the holders of said stock, the said Union Pacific Railway Company is in the possession and operation of each of the said railroads.

14. The Union Pacific Railway Company operates the railroad formerly belonging to the Denver and Boulder Valley Railroad Company, situated in the State of Colorado, 26.97 miles in length, for the trustees of the Kansas Pacific consolidated mortgage of May 1st, 1879, said trustees holding the title to said railroad subject to the trusts of the said indenture of May 1, 1879.

15. The railroad of the Lawrence and Emporia Railway Company of Kansas, thirty-one miles in length. The Union Pacific Railway Company owns the entire capital stock of this company, $465,000, which is held by the trustees under the trust indenture of September 4th, 1891. This company issued first-mortgage six per cent. bonds, dated January 25th, 1882, due January 1st, 1912, to John F. Dillon and Peter B. Wyckoff, for $465,000, all of which mortgage bonds are held by the trustees of the Kansas Pacific consolidated mortgage of May 1st, 1879, subject to the provisions of the said trust. The railway of this company is leased for a term of 99 years to the Lawrence, Emporia and Southwestern Railway Company at an annual rental of $1,000 and taxes.

16. The railroad of the Montana Union Railway Company, in the State of Montana, 72.23 miles in length. This road connects the Union Pacific with the Northern Pacific, and is operated under a joint traffic arrangement between the Union Pacific Railway Company and the Northern Pacific Railway Company. This company has issued $850,000 of capital stock. The Union Pacific owns $425,000. There is no funded debt. The stock owned by the Union Pacific Railway Company is held by the trustees under the trust indenture of September 4th, 1891. Part of the system of the Montana Union Railway Company consists of the Montana Railway Company in Montana, 14.83 miles of which the Union Pacific Railway Company owns the entire capital stock, consisting of $960,000, of which seventy per cent. has been paid, amounting to $420,000. This stock is held by the trustees under the trust indenture of September 4th, 1891. There is no funded debt. The lease of the Montana Railway Company is for an annual rental equal to six per cent. on the value of the demised premises. The Oregon Short Line and Utah Northern Railway Company has leased to the said Montana Union Railway Company 57.41 miles of railroad on the same terms.

17. The railroad of the Leavenworth, Topeka and Southwestern Railway Company of Kansas, 46.57 miles in length. The Union Pacific Railway Company and the Atchison, Topeka and Santa Fe Railroad Company are equally interested in the stock of this com-

pany, whereof $1,380,000 has been issued, each of those companies owning $550,900 of stock therein. Said company issued its first-mortgage four per cent. bonds, dated July 1st, 1882, due July 1st, 1912, to the American Loan and Trust Company of Boston, trustee, for $1,380,000. These mortgage bonds are held by the public, but the payment of the interest on one-half of the said issue has been endorsed or guaranteed by the Union Pacific Railway Company.

18. The railroad of the Manhattan, Alma and Burlingame Railway Company of Kansas, 56.62 miles in length. This company issued its capital stock for $1,000,000; also its first-mortgage six per cent. bonds, dated July 1st, 1880, due July 1st, 1910, to Frederick L. Ames and S. Lothrop Thorndike, trustees, for $678,000. The Union Pacific Railway Company and the Atchison, Topeka and Santa Fe Railroad Company each owns $118,650 of said
21 capital stock and $339,000 of the first-mortgage six per cent. bonds. The bonds owned by the Union Pacific Railway Company are held by the trustees under the trust indenture of September 4th, 1891.

19. Also, the railroad of the Central Branch, Union Pacific Railroad Company, situated in the State of Kansas, 100 miles, from Atchison to Waterville; also, its leased lines, to wit, the railroad of the Atchison, Colorado and Pacific Railroad Company, situated in the State of Kansas, 254.79 —; also, the railroad of the Atchison, Jewell County and Western Railroad Company situated in Kansas, 33.40 miles. The said Central Branch Company issued its capital stock for $1,000,000; also, its first-mortgage six per cent. bonds, dated May 1st, 1865, to Henry Day and Oliver Ames, trustees, for $1,600,000; also, its funded interest seven per cent. bonds, dated May 1st, 1865, due May 1st, 1895, to the same trustees last mentioned, for $630,000. It received United States subsidy bonds to the amount of $1,600,000, yet unpaid, on which a large amount of interest will become due, less amounts repaid and to be repaid by transportation or otherwise. The Atchison, Colorado and Pacific Railway Company issued capital stock to the amount of $1,522,400; also its first-mortgage six per cent. bonds, dated December 24, 1879, due May 1st, 1905, to Henry Day and Oliver Ames, trustees, for $4 070,000. The Union Pacific Railway Company owns $920,300 of the capital stock of this company which is held by the trustees under the trust indenture of September 4th, 1891. The Atchison, Jewell County and Western Railroad Company issued its capital stock for $202,800, also its first-mortgage six per cent. bonds, dated May 1st, 1879, due May 1st, 1905, to Henry Day and Oliver Ames, trustees, for $542,000. The Union Pacific Railway Company owns $105,000 of the capital stock of this company, which is held by the trustees under the trust indenture of September 4th, 1891. The Union Pacific Railway Company owns $874,200 of the capital stock of the said Central branch of the Union Pacific Railroad Company, which is held by the trustees under the trust indenture of September 4th, 1891. The railroad of the Central Branch Union Pacific Railroad Company, including the said two leased lines above men-

tioned, was leased to the Missouri Pacific Railway Company September 30th, 1885, for twenty-five years; the lessee company, as rental, to account to the lessor company for net earnings. The said Central Branch Company owns nine shares of $1,000 each of the stock of the Atchison Union Depot and Railroad Company.

20. The defendant is also the owner of the property and capital stock, or is interested in the property and capital stock, through its auxiliary companies, of the following-named corporations:

The Atchison Union Depot and Railroad Company, the property of which is located in the city of Atchison, in the State of Kansas.

The Boulder Valley and Central City Wagon Road Company, the property of which is situated in the State of Colorado.

The Bozeman Coal Company, an incorporation of the State of Montana, owning certain coal mines and mining properties therein.

The Callaway Improvement Company, a corporation of the State of Nebraska, owning property and doing business therein.

The Colorado Western Railroad Company, a corporation of the State of Colorado, which has entered upon the preliminary work of the construction of a railroad therein.

The Denver Union Railway and Terminal Company, a corporation of the State of Colorado, which has entered upon the preliminary work of the construction of a terminal plant in the city of Denver.

The Deseret Salt Company, a corporation of the Territory of Utah, owning property and carrying on business therein. The Echo and Park City Railway Company, a corporation of the Territory of Utah, owning a railway therein.

The Fort Worth and Denver City Railway Company, a corporation of the State of Texas, owning a railway line therein.

The Fort Worth and Denver Terminal Railway Company, a corporation of the State of Texas, owning a terminal plant in the city of Fort Worth.

The Green River Water Works Company, a corporation of the State of Wyoming, owning the water plant and engaged in operating the same in said State of Wyoming. The capital stock of said company issued and outstanding is $225,000; the first-mortgage bonds issued and outstanding $221,000, dated January 1st, 1889, due January 1st, 1919, interest six per cent.; the trustee of the said mortgage securities is the American Loan and Trust Company of Boston. The Union Pacific Railway Company owns all of the stock and bonds of this company, which are held by the trustees under the trust indenture of September 4th, 1891.

The Kearney and Black Hills Railway Company, a corporation of the State of Nebraska, owning a line of railroad therein.

23 The capital stock issued is $931,606.91; first-mortgage bonds issued and outstanding $887,000, dated May 1st, 1890, due May 1st, 1920, interest five per cent.; the trustee of said mortgage securities is the American Loan and Trust Company of Boston. The Union Pacific is the owner of $838,141.91 of said stock and $369,325 of said bonds, of which $337,966 of the stock and $105,000 of the

bonds are held by the trustees under the trust indenture of September 4th, 1891.

The Leavenworth Depot and Railroad Company, an incorporation of the State of Kansas, having a capital stock issued and outstanding of $150,000, and first-mortgage bonds issued $150,000. This company owns and operates a depot and terminal plant in the city of Leavenworth, in said State. The Union Pacific Railway Company is the owner of one-fourth of the capital stock therein, and owns and holds $63,000 of the said first-mortgage bonds. The Kansas Central Railway Company, hereinbefore referred to; also owns $35,000 of the stock of said Leavenworth Depot and Railroad Company.

The Loveland Pass Mining and Railroad Tunnel Company, an incorporation of the State of Colorado, engaged in mining and tunneling therein.

The Mammoth Mining Company, an incorporation of the Territory of Utah, engaged in business therein.

The Morrison Stone, Lime and Town Company, a corporation of the State of Colorado, doing business therein.

The Occidental and Oriental Steamship Company, a corporation of the State of California, engaged in steam navigation.

The capital stock of said company is $10,000,000, on which three per cent. has been paid in. The Union Pacific Railway Company owns one-half of the said stock, which is held by the trustees under the trust indenture of September 4th, 1891.

The Ogden Union Railway and Depot Company, a corporation of the Territory of Utah, owning and operating a union depot and terminal plant in the city of Ogden. The authorized stock of this company is $300,000, and the authorized issue of the first-mortgage bonds is limited to $1,000,000, dated September 1st, 1888, due September 1st, 1918, interest at five per cent. The trustee of said mortgage bonds is the American Loan and Trust Company, of Boston. The capital stock of this company, as issued, is to go one-half to the Union Pacific Railway Company and one-half to the Central Pacific Railroad Company. The Union Pacific Railway Company owns
$163,000 of the first-mortgage bonds, which are held by the
24 trustees under the trust indenture of September 4th, 1891.
The said Union Pacific Railway Company is interested in the management and operation of the Union depot and terminal plant to the extent of one-half of the whole interest therein.

The Omaha Union Depot Company, a corporation of the State of Nebraska, engaged in the construction and proposed maintenance and operation of a union depot and terminal plant in the city of Omaha. The authorized capital stock of said company is $1,500,000, on which subscriptions to the amount of $15,000 have been made, one-half by the Chicago, Burlington & Quincy Railroad Company, and one-half by the Union Pacific Railway Company. The stock issued to and owned by the Union Pacific Railway Company is held by the trustees under the trust indenture of September 4th, 1891. This company was incorporated by the joint action of the

said two last-named railway companies, and considerable real estate and other valuable rights have been acquired by it.

The Pacific Express Company, incorporated under the laws of Nebraska, and engaged in a general express business on the railway lines of the United States. The capital stock of said company is $5,000,000, of which the Union Pacific Railway Company owns $2,400,000, which is held by the trustees under the trust indenture of September 4th, 1891.

The Portland and Puget Sound Railroad Company, incorporated under the laws of Oregon, which said railroad company has entered upon the construction of a railroad line in the States of Oregon and Washington.

The Pueblo Union Depot and Railroad Company, incorporated under the laws of the State of Colorado, which owns and operates a union depot and terminal plant at Pueblo, in which said company the Union Pacific, Denver and Gulf Railway Company, hereinbefore referred to, has a valuable interest.

The Rattle Snake Water Company, incorporated under the laws of Wyoming, and owning and operating a water plant therein. There has been issued of the capital stock of the said company $78,300; there has also been issued and is outstanding $156,000 of the first-mortgage bonds of said company, dated July 1st, 1890, due July 1st, 1920, at six per cent., to the American Loan and Trust Company of Boston, trustee. All of said stock and all of said bonds so issued are owned by the Union Pacific Railway Company. Of the stock and bonds thus owned $66,300 in stock and $132,000 in bonds are held by the trustees under the trust indenture of September 4th, 1891.

The St. Joseph Terminal Railroad Company, incorporated under the laws of Missouri. This company owns and operates a union freight depot and facilities, machine shops and terminal station in the city of St. Joseph. There has been issued of its capital stock $300,000, one-half of which is owned by the St. Joseph and St. Louis Railroad Company, $125,000 by the St. Joseph and Grand Island Railroad Company, and $25,000 by the Union Pacific Railway Company. This terminal company has also issued $350,000 of its first-mortgage bonds, dated August 1st, 1888, due August 1st, 1918, at five per cent., to the Boston Safe Deposit and Trust Company, trustee. The stock owned by the Union Pacific Railway Company is held by the trustees under the trust indenture of September 4th, 1891.

The St. Joseph Union Depot Company, incorporated under the laws of Missouri. This company owns and operates a passenger depot and terminal plant at St. Joseph. It has issued capital stock to the amount of $9,000, in which the St. Joseph and Grand Island Company has a one-ninth interest. This company has also issued $110,000 of its first-mortgage bonds, dated January 1st, 1881, due January 1st, 1906, interest at six per cent. These bonds are outstanding.

The Tacoma and Lake City Railroad and Navigation Company, incorporated under the laws of Washington. This company owns

and operates a line of railroad from Tacoma to Lake City, 11.10 miles.

The Tintic Iron Company, incorporated under the laws of Utah, and engaged in the business of mining therein.

The Union Depot and Railroad Company of Denver, incorporated under the laws of the State of Colorado. This company owns and operates a union depot and terminal plant in the said city of Denver. It was organized and is maintained in the interest of the Union Pacific Railway Company, the Union Pacific, Denver and Gulf Railway Company and the Denver and Rio Grande Railway Company. Its capital stock is $400,000. This company issued its first-mortgage bonds in the sum of $300,000, dated February 20th, 1880, due September 1st, 1899, seven per cent. to George W. Clayton and David C. Dodge, trustees. Of the capital stock the Union Pacific Railway Company owns $240,000, and the Union Pacific, Denver and Gulf Railway Company $80,000.

The Union Depot Company of Kansas City, Missouri, incorporated under the laws of Missouri. This company owns and operates a union depot and terminal plant at the city of
26 Kansas City. It has issued capital stock to the amount of $210,000; it has also issued its first-mortgage bonds in sum of $109,000, dated July 2d, 1887, due July 1st, 1899, at eight per cent. to George H. Nettleton, G. W. Weld and C. F. Adams, Jr., trustees. Of the capital stock the Union Pacific Railway Company owns $21,000, which is held by the trustees under the trust indenture of September 4th, 1891.

The Union Depot Company of Spokane Falls, incorporated under the laws of Washington. This company owns and operates a union depot and terminal plant at Spokane Falls in said State of Washington. This company has issued capital stock in the sum of $5,000; it has also issued its first-mortgage gold bonds in the sum of $400,000, dated October 1st, 1889, due July 1st, 1919, at five per cent. to the American Loan and Trust Company, of Boston, trustee. Of the capital stock issued one-half is owned by the Seattle, Lake Shore and Eastern Railroad Company, and one-half by the Washington and Idaho Railroad Company; the ownership of which said stock by the Washington and Idaho Railroad Company places the one-half interest in this terminal property under the leases and agreements of the Oregon Railway and Navigation Company to and with the Oregon Short Line and Utah Northern Railway Company, hereinbefore referred to.

The Union Elevator Company, incorporated under the laws of Iowa, and owning an elevator plant in the city of Council Bluffs in said State. This company has issued its capital stock in the sum of $280,000. It was organized and is owned for the equal joint benefit of the Chicago, Burlington and Quincy Railroad Company, the Chicago, Milwaukee and St. Paul Railway Company, the Wabash Railroad Company, the Chicago, Rock Island and Pacific Railway Company, the Chicago and Northwestern Railway Company and the Union Pacific Railway Company.

The Union Elevator Company of Omaha, incorporated under the

laws of Nebraska. The capital stock of this company is $135,000, of which the Union Pacific Railway Company owns $81,000, which said stock so owned by the Union Pacific Company is held by the trustees under the trust indenture of September 4th, 1891.

The Union Land Company, incorporated under the laws of Nebraska and engaged in general land business.

The Utah Lime and Cement Company, incorporated under the laws of Utah and engaged in business in the said Territory. This company has issued its capital stock in the sum of $150,000, of which the Oregon Short Line and Utah Northern Railway Company owns $25,000.

27 The Union Pacific Coal Company, incorporated under the laws of the State of Wyoming, engaged in a general coal mining and sales business in said State, and other States adjacent thereto. The authorized capital stock of this company is $20,000,000, and it has issued of its stock $5,000,000; it has also issued its first-mortgage bonds in the sum of $5,000,000, dated May 1st, 1891, due May 1st, 1921, at five per cent., to the Union Trust Company of New York, trustee. The Union Pacific Railway Company is the owner of $4,437,000 of the capital stock of said company, and of $4,438,000 of the said first-mortgage bonds of said company, which said stock and said bonds were received in payment and satisfaction for coal lands and properties conveyed by the said Union Pacific Railway Company to said Union Pacific Coal Company. All of said stock and bonds are now held by the trustees under the trust indenture of September 4th, 1891. The Union Pacific Railway Company also holds as collateral $512,000 of the said first-mortgage bonds and $562,000 of the said capital stock of said Union Pacific Coal Company, all of which has been by it placed under the said trust indenture of September 4th, 1891; authority so to place said stock and bonds under the said trust indenture of September 4th, 1891, having been duly given to said Union Pacific Railway Company by the owners of the said stock and bonds.

The Willamette Transportation and Locks Company, a corporation of the State of Oregon, doing business in said State.

The Wood River Improvement Company, incorporated under the laws of Nebraska for the purpose of railway construction and land operations. This company has issued its capital stock in the sum of $400,000, of which the Union Pacific Railway Company owns $356,500, of which $100,000 are held by the trustees under the trust indenture of September 4th, 1891.

That all of said lines of railroads, telegraph lines and property above or herein described or referred to, including the lines of railroad and properties of each of the defendants, have been, and are now, being operated by or for or in the interest of the defendant, The Union Pacific Railway Company as a unit, forming one vast railway and water system known as the Union Pacific system, the maintenance of every part of which is essential to the profitable operation of the remainder; and that it is engaged in the transportation of freight and passengers and in carrying the troops,

mails and property of the United States over the said lines of railroad, and in performing all the duties of a common carrier.

Fifth. Your orators further allege that in addition to the
28 foregoing railways and other properties, and among the most important assets of the said defendant, are large tracts of lands situated in each of the States of Iowa, Nebraska, Missouri, Kansas, Colorado, Wyoming, Montana, Idaho, Washington and Oregon, and in the Territory of Utah, which became the property of the defendant The Union Pacific Railway Company, by virtue of said acts of the Congress of the United States or by grants from municipalities and individuals to the said defendant from time to time. That said lands so granted to the defendant or to its predecessors in title by Congress amounted to several millions of acres, of which the defendant has sold a large portion, and is now seized and possessed of the remainder, certain of which granted lands are subject to the liens of certain of the mortgages hereinafter mentioned, and all of which are subject to the liens of certain other of said mortgages, as hereinafter stated; and the titles of the lands so as aforesaid granted to the said defendant by municipalities and individuals are vested in individuals and corporations who hold the same in trust for the said Union Pacific Railway Company.

Your orators further allege that the defendant, The Union Pacific Railway Company, has a capital stock divided into shares of $100 each, now outstanding, consisting of $60,868,500 of stock.

Sixth. Your orators show that on the 26th of April, 1893, the said Union Pacific Railway Company presented to its stockholders at its annual meeting, held on said day, a statement of the funded or bonded debt of said company, which said statement showed that said company, on December 31, 1892, had outstanding bonds and notes to the amount of $97,682,735, of which $85,492,735 were afloat and in the hands of the public at that date. A copy of said statement is annexed to this bill of complaint as part thereof, and marked "Exhibit A." Your orators aver that, at the date of the filing of this bill, the funded or bonded debt of the said company, as shown in said Exhibit A, remains substantially the same as on the 31st day of December, 1892; and your orators aver on information that said statement is substantially correct, but the same does not include the subsidy indebtedness of the company to the United States.

The United States under the acts of Congress hereinbefore mentioned, issued its bonds to the Union Pacific Railroad Company for $27,236,513.

To the Kansas Pacific Railway Company to the amount of $6,303,000.

29 Which indebtedness will mature in installments, as follows:

November 1st, 1895	$640,000
January 1st, 1896	1,440,000
February 1st, 1896	4,320,000
January 1st, 1897	6,440,000

January 1st, 1898	17,342,512
January 1st, 1899	3,157,000
Total	$33,539,512

There will be due at said times to the United States the balance of accrued interest on said subsidy bonds, amounting to a large sum of money, less transportation services and payments on account, which balance amounting now to about $18,000,000 in addition to the principal may be increased very considerably by the time said subsidy debt falls due.

Your orators aver that the said report presented by the directors to the stockholders at the annual meeting on April 26, 1893, stated the liabilities including capital stock and surplus on December 31, 1892, of the Union Pacific Railway Company as follows:

Liabilities.		
Capital stock		$60,868,500 00
Funded debt		85,492,185 00
United States six per cent. currency bonds		33,539,512 00
Interest on United States bonds, balance of, sinking fund deducted		17,784,764 48
Interest accrued not yet due		877,799 27
Bonds and stock owned by auxiliary companies held by this company as collateral (see assets)		7,542,345 98
Income accounts:		
General income	$12,356,838 24	
Income used for sinking funds	7,751,448 31	
Land and trust income	24,575,917 27	
	$44,694,203 82	
Less deficit of United States requirements and accumulations of the sinking fund as compared with accrued interest on United States bonds February 1, 1880, to date	5,368,268 63	
		39,325,935 19
		$245,431,041 92

Your orators allege that the funded debt of the said company, aside from said subsidy debt, is secured by mortgages or instruments referred to in Exhibit A, which said exhibit shows the names of the trustees, the date when the interest is payable, and the
30 amount of bonds outstanding and in the hands of the public, which amount, on the 31st day of December, 1892, was $85,492,185, not including the said subsidy debt to the Government, and interest accrued thereon.

Referring to said Exhibit A and to the indentures and instruments therein mentioned, your orators say that the said first mortgage of the Union Pacific Railroad Company to Ames and Dexter, as trustees, therein mentioned is dated November 1, 1865, and se-

cures bonds of the Union Pacific Railroad Company, secured by mortgage from a point on the western boundary of the State of Iowa, heretofore fixed by the President of the United States, pursuant to the terms of the provisions of the said acts of Congress, to wit, from said city of Omaha in the former Territory, now State of Nebraska, to Ogden, together with all its lands, tenements, hereditaments, rights of way and easements acquired or procured for right of way and telegraph lines and for depots, engine-houses, car-houses, station-houses, warehouses, machine shops, superstructures, erections and fixtures; also, all and singular the franchises owned, possessed or acquired by the said Union Pacific Railroad Company for the purpose of building and operating said railroad and telegraph, and also all the rails, depots, yards, engine-houses, car-houses, station-houses, warehouses, machine shops, workshops and fixtures of said railroad company, and also all goods and chattels owned or thereafter to be owned or acquired by said company necessary to said railroad and telegraph line or to the running and operating of the same. Said mortgage shall be due in 1896 to 1899. The total amount of outstanding bonds secured thereby is $27,299,000.

The sinking-fund mortgage to the Union Trust Company, mentioned in said Exhibit A, is dated the 18th day of December, 1873. The bonds issued and outstanding thereunder on December 31st, 1892, were $5,176,000; the principal thereof, together with an installment of interest, matured on the 1st day of September, 1893. Your orators aver that an instrument providing for an extension of certain of said bonds issued under said sinking-fund mortgage was executed by the Union Pacific Railway Company, wherein and whereby it was provided that such of the holders of the said bonds, as desired, might have the time of final payment extended for the further term of six years from the said first day of September, 1893, and interest coupons were duly prepared and executed by the said Union Pacific Railway Company, the successor by consolidation of the said Union Pacific Railroad Company, the original obligors named in said bonds, said interest coupons being at the rate of eight per cent., payable semi-annually in gold coin of the United
31 States. By the terms of the indenture of mortgage securing the said debt the same is a lien upon the right, title, estate and interest of the Union Pacific Railroad Company in and to the railroad of the said company and its appurtenances mentioned in the said indenture of mortgage, together with all the lands, tenements, hereditaments and rights of way of the said railroad company, superstructures, all fixtures, and all and singular the lands granted to the Union Pacific railroad by the said act of Congress of July 1st, 1862, and its amendments, and also the goods and chattels owned or to be acquired by the said Union Pacific Railroad Company, or convenient to the said railroad or its operation, or used or employed in connection therewith.

The Omaha Bridge bonds mentioned in said Exhibit A are secured by a trust indenture to Morgan, Ames & Atkins, which indenture is dated the 27th of September, 1871, and the principal thereof will fall due on the first day of April, 1896. The Union

Pacific Railway Company subsequently, and on the 1st day of October, 1885, executed to the Central Trust Company an indenture mortgaging the said bridge to secure the Omaha Bridge renewal bonds mentioned in Exhibit "A," of which they were outstanding on the 31st of December, 1892, $889,000.

The collateral trust six per cent. indenture to the Union Trust Company of New York, mentioned in Exhibit A, is dated the 1st day of July, 1879. The number of Union Pacific bonds outstanding on December 31st, 1892, and secured thereby is $3,775,000. The property mortgaged and pledged in said collateral indenture to secure the said bonds of the Union Pacific Railroad Company consists of certain bonds which the Union Pacific Company owns of the Colorado Central Railroad Company, now one of the constituents of the Union Pacific, Denver and Gulf Railroad Company; also, certain bonds of the Omaha and Republican Valley Railroad Company, now one of the constituents of the aforesaid-mentioned Omaha and Republican Valley Railway Company; also, certain mortgage bonds owned by the Union Pacific Company of the Utah and Northern Railway Company, said last-mentioned company being one of the constituent companies of the said Oregon Short Line and Utah Northern Railroad Company consolidated as above mentioned. Said collateral trust indenture provides, in substance, that whenever the Union Pacific bonds or the interest thereon are not paid that the trustee may sell the underlying bonds by advertisement in one or more newspapers published in the cities of Boston and New York.

32 The Eastern Division bonds, being bonds of the Kansas Pacific Railway Company, mentioned in said Exhibit A, are secured by a mortgage dated the 1st day of August, 1865, to Henry M. Alexander, now the surviving trustee, and is a first lien on the railroad formerly of the Kansas Pacific Railroad Company from its initial point at Wyandotte, in the State of Kansas, for 140 miles, but does not cover the land grant. $2,240,000 are unpaid and outstanding under the said indenture.

The Middle Division bonds mentioned in said Exhibit A are secured by a mortgage dated the 1st day of June, 1866, Adolphus Meyer, being now the surviving trustee. This mortgage covers the railroad formerly belonging to the Kansas Pacific from the 140-mile post to a point west of the 100th meridian, to which the grant of bonds of the United States extends by virtue of the acts of Congress in that behalf, which your orators aver, on information and belief, to be about 394 miles from the initial point. This mortgage does not cover the land grant. There were on December 31st, 1892, and now are, $4,063,000 of outstanding bonds secured by the said mortgage.

The Denver Extension bonds, mentioned in said Exhibit A, are secured by a mortgage indenture to Stewart, Endicott and Rutten, present trustees, which mortgage indenture is dated the 20th of June, 1869. This indenture covers the railroad which was owned by the Kansas Pacific Company, from the Missouri river to Denver, together with that company's right, title and interest in 3,000,000

acres of land, to which under the acts of Congress it became entitled. It recites that it is a first lien on 236 miles of road and about 3,000,000 acres of land, and a lien upon the remaining 477 miles of railroad, subject to prior liens and to the subsidy obligations to the United States Government. Your orators allege that there are outstanding bonds secured by the said mortgage to the amount of $5,887,000. $600,000 of the Leavenworth Branch bonds are also outstanding as stated in the said Exhibit A.

The consolidated mortgage bonds mentioned in said Exhibit A are secured by an indenture, dated the 1st day of May, 1879, executed by the Kansas Pacific Railway Company to Jay Gould and Russell Sage, as trustees. Jay Gould having subsequently died, George J. Gould duly became the successor trustee. This mortgage covers the entire railroad of the Kansas Pacific from its initial point to the city of Denver. It also covers and embraces all the lands granted by the acts of Congress to aid in the construction of the Kansas Pacific Railway Company. It also covers various
33 stocks and bonds of other and connecting railway companies mentioned and specified in a schedule annexed to the said indenture. The interest on said mortgage is payable semi-annually in May and November. On the 31st day of December, 1892, there were, and still are, outstanding bonds secured by the said mortgage amounting in the aggregate to $11,720,000.

The Cheyenne Branch bonds mentioned in the said Exhibit A, secured by mortgage to Gould and Sage, trustees, is a mortgage which was executed by the Denver Pacific Railroad and Telegraph Company, dated the 10th day of August, 1869, said mortgagor company being one of the companies which formed, by the union and consolidation of January 24th, 1880, the Union Pacific Railway Company. Gould and Sage, as trustees under the Kansas Pacific consolidated mortgage of May 1st, 1879, for the security of the bondholders of said last-mentioned mortgage, own and hold $971,000 of the bonds executed by the Denver Pacific Railroad and Telegraph Company secured by the said indenture, dated August 10th, 1869.

The trust five per cent. bonds mentioned in Exhibit A, under which the New England Trust Company, of Boston, is trustee, are secured by an indenture executed by the Union Pacific Railway Company to said trust company, trustee, dated April 2d, 1883. The Union Pacific Railway Company issued, and there are outstanding, secured by the said indenture, the bonds of the Union Pacific Railway Company to the amount of $4,790,000. These bonds are secured by a pledge to the said trustee of bonds of the said Colorado Central Railroad Company, bonds of the Omaha and Republican Valley Railroad Company, bonds of the Omaha and Republican Valley Railway Company, bonds of the Utah Southern Railroad Extension Company and bonds of the Utah and Northern Railway Company, with provision in case of default the same as in the collateral trust indenture before mentioned, with power in case of default on the part of the Union Pacific Railway Company in the trustee to sell at auction the collaterals thus pledged.

The collateral trust four and one-half per cent. bonds to the New England Trust Company, trustee mentioned in said Exhibit A, is a like collateral trust instrument to the one just above described. It is dated the first day of August, 1889, and is secured by a pledge of bonds owned by the Union Pacific Railway Company, of the Denver, Leadville and Gunnison Railway Company. There have been issued, and are outstanding under the said indenture, $2,037,000 of bonds, all of which are held by the public, except $237,000 owned by the Union Pacific Railway Company, and pledged in the
34 said trust indenture of September 4th, 1891, as part security for the collateral trust six per cent. notes.

The equipment trust bonds, series A, B and C, mentioned in the said Exhibit A, are outstanding, as therein shown. These indentures cover a very important and essential part of the equipment used on the entire system of the said road, and the provisions of the said indentures are such that, if default be made in the payment of the obligation of the railway company thereon, its right to enjoy the said equipment ceases or is forfeited. Such equipment is essential to continuing the business of the company.

The collateral trust six per cent. notes secured by a trust indenture to Drexel, Morgan & Company, mentioned in said Exhibit A is the said trust indenture of September 4th, 1891, hereinbefore mentioned. The said trust indenture was executed by the Union Pacific Railway Company to Drexel, Morgan & Company, of the city of New York, as trustees, to secure certain promissory notes of the railway company therein mentioned. The amount of such notes outstanding under this indenture on December 31, 1892, was the sum of $15,793,000 or thereabouts. Said notes are dated August 1st, 1891, and are payable three years after the date thereof, to wit: August 1, 1894, with interest semi-annually, payable February and August. The company, in and by the said indenture, pledged certain bonds and stocks as security for the said notes. A schedule of the said bonds and stock thus pledged is hereto annexed, marked "Exhibit B," the same being a transcript of Schedule A of the said trust indenture to Drexel, Morgan & Company. It is by virtue of these bonds and stocks that the Union Pacific Railway Company controls the great branch systems of railroads tributary to its main properties, and it is vitally essential to every interest of the said railway and its creditors that the said bonds and stocks, or a controlling portion thereof, shall be and remain the property of the Union Pacific Railway Company.

By the trust of the said indenture of September 4th, 1891, the Union Pacific Railway Company is the owner of said bonds and stocks now remaining in the said trust, and when the said debt secured by the said indenture, shall have been paid will become the unencumbered owner thereof, and while not in default, it is, by the provisions of said indenture, entitled to vote on the said shares at all corporate elections, and is thereby enabled to control the corporate organizations of the said company's auxiliary or connecting lines in the same manner as if the said pledge had not been made.

All of the said notes will become due August 1, 1894. No other provisions than such as exists in the said indenture has been made by the said company for the payment of said notes when they become due. By the provisions of said trust indenture, in case of default, the trustees are authorized to advertise and to sell the underlying securities.

In addition to funded and other obligations hereinbefore mentioned, or in said Exhibit A, the Union Pacific Railway Company is liable as endorser or guarantor on the bonds or the interest thereon or the obligations of the Omaha and Republican Valley Railway Company, Oregon Short Line and Utah Northern Railway Company, Oregon Railway and Navigation Company, St. Joseph and Grand Island Railroad Company, Kansas City and Omaha Railroad Company, Union Pacific, Denver and Gulf Railway Company, Union Pacific, Lincoln and Colorado Railroad Company, and other companies, and that the same will amount in the aggregate to many millions of dollars, the details whereof are unknown to your orators.

In addition to which the said Union Pacific Railway Company is also obligated as guarantor or by contract provisions to make good the deficit in the revenues of several of its companies constituting the said Union Pacific system, from year to year, and your orators are informed and believe that the obligations so assumed and outstanding will require the said Union Pacific Company to pay a large sum of money for the year 1893, and an annual sum for each of the years following, the precise amount of which will depend upon the character of the business and the conditions of the country from time to time.

In addition to which your orators aver that the Union Pacific Railway Company and the companies constituting its system are liable for a very large sum of money by way of rentals of roads, which rentals if not paid will result in a forfeiture of the constitute part of the Union Pacific system, which — leases, and dismemberment of the system, and largely impair the value of the Union Pacific property and of its bonds and stock as well also as the value of each of the companies embraced in said system and the several issues of stock and bonds of each of the same.

Seventh. Your orators allege on information and belief that the defendant is indebted for labor and material due and unpaid on the 1st day of October, 1893, amounting to the sum of $1,500,000, or thereabouts, on which, if not paid or provided for, the said company is liable to innumerable suits, attachments, and judgments.

That the gross earnings of the Union Pacific railway system from the operation thereof and from other property, for the business year ending December 31st, 1892, amounted to... $45,025,176 40

And the revenue from other sources to..... 1,548,118 99

Making a total of..... ... . $46,573,295 39

That its operating and transportation expenses, rentals, interest, sinking fund, and other charges paid during the same year amounted to.....	44,503,538 35
Leaving a surplus for said year of.....	$2,069,757 04

Eighth. Your orators further show that it appears from the report of the said Union Pacific Railway Company that from January 1st to July 1st, 1893, there was a falling off in the gross revenues of the company for said six months, as compared with the first six months of the preceding year, of $863,733.38, and a falling off of the net revenues of the company for the same period of time of $839,059.66.

Your orators further show, upon information and belief, that for the months of July and August, 1893, there was a further falling off in the gross revenues of the said system, as compared with the same months of the preceding year, of about the sum of $2,000,000, and a falling off in the net revenues for the said two months, as compared with the same two months of the preceding year, of about $1,400,000.

Your orators further aver, on information and belief, that there has been a further falling off in the gross revenues of said system for the month of September, 1893, in about the sum of $1,500,000, as compared with the month of September of the preceding year. Your orators further aver that the foregoing information upon which the said last two allegations are made has been received by them from the officers of the said Union Pacific Railway Company familiar with its affairs and especially familiar with the result of the operations of said system during the months aforesaid. Your orators further aver that, as appears from a statement made by the financial and accounting officers of the said Union Pacific Railway Company and of the said Union Pacific system, covering the operations of said system for the eight months ending August 31, 1893, there has been a falling off in gross revenues of said system for the said eight months, as compared with the same months of the preceding year, of about $3,154,000, and a falling off in net revenues of the said system for the same eight months, as compared with the same period of the preceding year, of about the sum of $2,588,000; the said statement being in the words and figures following, to wit:

THE UNION PACIFIC SYSTEM.

(8,166 miles of railway, including also the water lines of the Oregon Railway and Navigation Company.)

Approximate Result of the Financial Operations of the Entire System for the Eight Months Ending August 31, 1893, in Comparison with the Same Months in 1892.

	1893.	1892.	Increase.	Decrease.
Income:				
Earnings	‡$24,649,706 58	$27,803,713 70	.....	$3,154,007 12
Operating expenses, excluding taxes	‡17,631,163 53	18,197,371 38	.....	566,207 85
Surplus earnings, taxes not deducted	‡$7,018,543 05	$9,606,342 32	.....	$2,587,799 27
Income from investments outside of the system	432,210 62	439,202 72	.....	6,992 10
Interest due March 1, 1892, on sinking-fund mortgage 8 per cent. bonds, repayable by the trustees	8,769 25	99,920 00	.....	99,920 00
Proceeds miscellaneous land sales	32,608 16	13,895 79	.....	5,126 54
Montana Union Railway Co., rental one-half of	.....	32,608 15	.....	.....
Total income	$7,492,131 08	$10,191,968 99	.....	$2,699,837 91
Expenditures:				
Taxes	$1,090,553 35	$1,098,443 09	.....	$7,889 74
Interest on bonds and trust notes	7,229,333 33	7,164,160 00	$65,173 33	.....
Discount and interest	*48,105 48	*28,048 57	.....	20,146 91
United States requirements	710,000 00	775,000 00	.....	65,600 00
Sinking-fund requirements of companies in the system	568,272 50	813,420 84	.....	245,148 34
Dividend on Oregon R'y & Navigation Co. stock afloat	299,355 00	298,342 00	1,013 00	.....
Loss in operation of the Oregon R'y & Nav. Co. water lines	†70,000 00	62,239 97	7,760 03	.....
Northern Pacific Terminal Co., interest	78,880 00	78,880 00	.....	.....
Discount on bonds sold, premiums, &c.	3,824 42	1,668 75	2,155 67	.....
Land expenses, Union division	34,443 91	54,774 63	.....	20,330 72
Land taxes, Union division	*5,615 13	7,918 15	.....	13,533 28
Profit and loss	981 34	11,066 78	.....	10,085 43
Total expenditures	$10,031,833 25	$10,337,865 64	.....	$306,032 39
Balance of income, deficit	$2,539,702 17	$145,896 65	$2,393,805 52	.....

*Credit. †August, 1893, estimated at $6,000 loss. ‡August, 1893, estimated.

38 Your orators further aver on information and belief that the stagnation of business in the territory through and into which the said system extends and the financial depression now prevailing throughout the country indicate, and your orators charge the fact to be, that there will be a still further falling off in gross and net revenues of said company for the remaining months of the year 1893, as compared with the same months of the preceding year.

Wherefore, your orators allege that for the year 1893 the business of the said company will fail to meet its expenses and charges by the sum of at least $3,000,000; that the said falling off in the earnings of the said system is occasioned in part by the decrease in immigration, in part by the depression in business and the extraordinary stringency of the money markets amounting to a financial panic, and other causes well known to the public.

And your orators aver, upon information and belief, that the said defendant, The Union Pacific Railway Company is not now and will not hereafter during the said year 1893, be able to earn, either upon its own lines of railway or upon the said system, or either or both, its operating expenses and fixed charges, and that the said defendant is insolvent, that is to say, it cannot pay or meet its indebtedness and liabilities as they fall due or accrue, in the usual and ordinary course of business.

Ninth. That the said bonds secured by the various mortgages made by the defendant, The Union Pacific Railway Company, and the said several branch roads and connecting companies are each capable of separate default, and said mortgage and equipment contracts of separate foreclosure on some part of said railway system or its equipment; and your orators aver that a separate foreclosure of any one of said mortgages or liens would be disastrous to the entire system.

That the bonds issued under the said mortgages are held by different individuals and corporations both in the United States of America and in Europe; that there is only a partial record, to wit, of registered bonds kept by the defendants, so that it would be impossible for the defendants or your orators to name the persons owning said bonds.

Your orators further show that interest and sinking-fund charges have matured during the said month of September on the bonds outstanding of the said Union Pacific Railway Company, and of the said several railway corporations composing its said system to the amount of more than $1,000,000,
39 a portion of which is unpaid, and during the month of October, 1893, interest and sinking-fund charges will mature to an amount of about $750,000, and during the month of November interest and sinking-fund charges will mature in the amount of about $850,000, and during the month of December, 1893, interest and sinking-fund charges will mature in the sum of about $1,000,000, and during the month of January, 1894, interest and sinking-fund charges will mature in the sum of more than $1,000,000, and there-

after from month to month the interest and sinking-fund charges will mature at the rate of about $1,000,000 per month.

Your orators further aver, on information and belief, that neither the said Union Pacific Railway Company, nor any of the said railroad corporations composing the said Union Pacific system, will or can have sufficient funds or assets with which to pay the said interest and sinking-fund charges so maturing from month to month on all or any of said obligations at the several dates when such interest and sinking-fund charges are due and payable; and the said Union Pacific Railway Company and each of the said several railway companies constituting a part of the Union Pacific system will necessarily default in the payment of such interest and sinking-fund charges maturing the said remaining months of the present year, and thereby the holders of the bonds and obligations of the said several companies will have the right to commence a multitude of actions against the said Union Pacific Railway Company and the said several other defendant railway corporations to recover the said several sums of money due on their bonds and obligations, and thereby a multiplicity of suits will be commenced against each of the said defendants, and their properties, both real and personal, will be seized upon to satisfy the said debts and demands; the various mortgages securing the said bonds and obligations will become defaulted and subject to foreclosure proceedings, and the said Union Pacific system will be dismembered, and the said several corporate roads and properties deprived of their just and fair value as parts of the said system, and the properties, assets and securities of the said several companies will be greatly lessened, depreciated and dissipated, to the manifest and irreparable injury of the public, the Government of the United States, and the company's creditors and shareholders.

Tenth. Your orators further aver that the owned, controlled and operated lines of railroad, and the lands and terminal properties, of the defendant The Union Pacific Railway Company lie in many different States and Territories, and are subject to the jurisdiction of the courts in each of the counties in each of said States and Territories in which the property of the said defendant railway company is situated.

That the said railroads and properties as now held and controlled or operated as part of the said system by or for the last-named defendant, as aforesaid form important trunk lines, which constitute one of the most important ingredients of their value, and that their severance would result in a ruinous sacrifice to every interest in the property, including the rights and interests of your orators; and that unless this court, in view of the impending and inevitable defaults, as aforesaid, will deal with the property as a single trust fund, and take it into judicial custody for the protection of every interest therein, individual creditors will assert their remedies in different courts in said several States and Territories; that a race of diligence will result and judgments and priorities will be attempted; that levies and attachments will be laid upon engines and cars of each of the said several defendants, which will greatly interfere with and

ultimately prevent the said defendants from the proper discharge of their duties as public carriers; that the transportation of the United States mails and property will be stopped; that the said Union Pacific Railway Company will be unable to fulfill its charter duties to the Government of the United States and to connecting railroads; that commerce between the several States will be interfered with; that communication between many cities, towns, and places which are wholly dependent upon said railroads will be interrupted; that serious and irreparable injury to their trade and commerce and their general prosperity will result; that divers of the leasors of the railroads now operated by the said defendants as aforesaid will enforce the re-entry covenants of their leases; that a continued default of the mortgage debts will, by the terms of the various mortgages, produce the immediate maturity of all the bonds secured by said mortgages; that a vast and unnecessary multiplicity of suits will result, and a most important and valuable property will be dismembered by the clashing decrees of many courts at the suits of separate creditors. Your orators aver that said system may be protected and preserved as a valuable single property, by adequate judicial intervention and action, and the sums due and to become due to the said defendants' bondholders and creditors secured and ultimately paid in full; but your orators aver that unless such a course is pursued, to wit, the taking of the property into judicial custody, said property will be dismantled, dissipated and dismembered, and vast sums of money will be lost to the various creditors and stockholders of said defendant companies, and the public interests seriously affected. And your orators aver that the unity
41 of the property and its integrity as a whole, as now held and operated, constitute the most important elements of its value, and that to permit its severance will result in ruinous sacrifice of every interest in said property.

Eleventh. That by said acts of Congress there was granted to the said defendant, The Union Pacific Railway Company, its successors and assigns, for the purpose of aiding in the construction of its said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers to the amount of ten alternate sections per mile on each side of said railroad line not reserved, sold, granted or otherwise appropriated and free from pre-emption or other claims or rights at the time the line of said railroad should be definitely fixed.

That the lands so granted lie in the States of Nebraska, Wyoming, Kansas, Colorado, and the Territory of Utah.

That one of the reasons which influenced the said Union Pacific Railway Company to construct or acquire many of the branch and connecting roads hereinbefore described was to bring into the market large and fertile tracts of said lands lying at distances more or less remote from its main lines.

That the lands sold by the said defendant have been sold at low prices; the policy of the defendant in fixing such low prices on

said lands being to attract purchasers, in order that the country tributary to its lines of railroad might become settled and its business thereby increased.

That the policy pursued by the said defendant in the sale of its lands has resulted in the building of many cities and towns and in establishing innumerable farms, and manufacturing and other industries along its main line and branches, and in the creation of a great commerce between the States and Territories through, and into which the several lines composing the Union Pacific system run, and between those States and the other States of the United States and Europe and Asia, from which a large and profitable traffic has grown up over the defendant's railway system.

That the object sought to be accomplished by the said defendant in offering its lands for sale to settlers at the low price hereinbefore stated, namely, the settlement of the country tributary to its railroad, and the consequent creation of a large and profitable traffic over its railway system having been accomplished, the time
42 has arrived when the said defendant can wisely adopt a policy of holding its remaining lands for higher prices; and your orators allege that, if the said defendant's said railway system and the lands so remaining to it can be taken into judicial custody and preserved and managed as a unit, said remaining lands can be sold from time to time for prices equal to their constantly increasing value, and the proceeds that will be received from such sales, together with the earnings of the said defendant's railway system, will be more than sufficient to pay and discharge all the defendant's obligations to its creditors, and preserve for its stockholders said railway system freed from debt. Ifsaid lands be not taken into judiciai custody by the appointment of receivers authorized and empowered to preserve the same and said railway as a unit, said lands will be sold under decrees and executions at the suits of lienholders or others at prices far less than their value, and will not realize, together with said railway system, a sum anything like sufficient to pay the bonds now outstanding under the several mortgages made by the defendant as aforesaid.

Your orators allege that said lands are worth a sum so far in excess of any sum that can be paid by any individuals who would be likely to (purchase*d*) the same at a public judicial sale, that to allow said lands to be sold in such a manner would be to sacrifice the same, and would entail great and irreparable loss upon the stockholders, bondholders and creditors of the defendant.

That part of the assets and property of the said Union Pacific Railway Company is located in the State of Nebraska, in the district embraced within the jurisdiction of the circuit court of the United States for the eighth circuit and district of Nebraska.

Twelfth. Your orators state that the aforementioned grant of lands and subsidy bonds of the United States to the Union Pacific Railroad Company, and branches constituting the system of Pacific railroads, was declared by section six, of the said act of Congress of July 1st, 1862, to be made "upon condition that the said company shall pay said bonds at maturity, and shall keep said railroad and

telegraph line in repair and use, and shall at all times transmit dispatches by said telegraph line, and transport mails, troops and munitions of war, and public stores, upon said company's railroad for the Government, whenever required to do so by any department thereof, and that the Government shall at all times have the preference in the use of the same for all purposes aforesaid (at fair and reasonable rates of compensation, not to exceed the amounts paid by private parties for the same kind of service); and all com-
43 pensation for services rendered for the Government shall be applied to the payment of said bonds and interest until the whole amount is fully paid."

By the act of Congress approved March 3, 1873, relating to the said Union Pacific Railroad Company, it was, in order effectually to secure the rights of the United States in respect to the said road and its continued and uninterrupted operation and use, among other things, enacted as follows:

"The laws of the United States providing for proceedings in bankruptcy shall not be held to apply to the said corporation."

And your orators show that the Supreme Court of the United States, in considering the relations of the Union Pacific Company to the Government of the United States, has adjudged that the said company and all of its branches mentioned and described in the said acts of Congress constitute public and governmental agencies of the United States for the purpose of securing to the United States at all times the operation and use of the said road for the purposes specified in the acts of Congress in that behalf, which purposes would be defeated if the rolling stock and property of the said railroads were seized and sold under attachments, levies and executions, and the interest of the United States, as well as all of the other creditors of the company, would be thereby irreparably injured and destroyed.

Thirteenth. And your orators further allege that the matters in controversy herein exceed the sum of $5,000, exclusive of interest and costs.

And your orators allege that this is a suit arising under the Constitution and laws of the United States, and especially under and by virtue of the several acts of Congress hereinbefore referred to.

Wherefore, and forasmuch as your orators are remediless in the premises at and by the strict rules of the common law, and can have relief only in a court of equity, where matters of this nature are properly cognizable and reviewable, they file this bill of complaint in behalf of themselves and all others in like relations to the said property; and pray, the premises considered:

1. That your honors may grant unto your orators a writ of subpœna directed to the defendants, The Union Pacific Railway Company; The Atchison, Colorado and Pacific Railway Company; The Atchison, Jewell County and Western Railroad Company; The Boulder Valley and Central City Wagon Road Company;
44 The Bozeman Coal Company; The Callaway Improvement Company; The Carbon Cut-off Railway Company; The Central Branch Union Pacific Railroad Company; The Denver,

Leadville and Gunnison Railway Company; The Green River Water Works Company; The Junction City and Fort Kearney Railway Company; The Kansas Central Railroad Company; The Kansas City and Omaha Railroad Company; The Kearney and Black Hills Railway Company; The Laramie, North Park and Pacific Railroad and Telegraph Company; The Lawrence and Emporia Railway Company; The Loveland Pass Mining and Railroad Tunnel Company; The Montana Railway Company; The Morrison Stone, Lime and Town Company; The Omaha and Republican Valley Railway Company; The Oregon Railway and Navigation Company; The Oregon Short Line and Utah Northern Railway Company; The St. Joseph and Grand Island Railroad Company; The Salina and Southwestern Railway Company; The Solomon Railroad Company; The Union Land Company; The Union Pacific, Denver and Gulf Railway Company; The Union Pacific, Lincoln and Colorado Railway Company, and The Union Pacific Coal Company, thereby commanding each of them at a certain time and under a certain penalty therein to be named, personally to be and appear before this honorable court, then and there to answer all and singular the matters aforesaid, but without oath, all answers under oath being hereby expressly waived according to the practice under the rules of this court, and to stand and abide by and perform such order, direction and decree as shall be made herein and as to your honors shall seem equitable and just.

2. That the court will fully administer the trust fund in which your orators are interested, constituting the entire railroad system, lands and assets of the said defendant corporation, The Union Pacific Railway Company, and will for such purpose marshal all its assets and ascertain the several respective liens and priorities existing upon each and every part of all the said system of railway and property and the amount due upon each and every part of such mortgages or other liens, and enforce and decree the rights, liens and equities of each and all the stockholders and bondholders and creditors of the said defendants, and of each of them, as the same may be finally ascertained and decreed by the court upon the respective interventions or applications of each and every of such stockholder, creditor or lienor, in and to not only said lines of railroad, appurtenances, equipments, lands and property, but also to and upon each and every portion of the assets and property of each of the said corporations.

3. That, for the purpose of enforcing the liens and equities of the holders of the loans and of the floating debt of the
45 said defendant, The Union Pacific Railway Company, and of the respective stockholders, bondholders, lienholders and general creditors of each of the said defendants, and of each of the companies embraced in or operated as a part of the said system, as well as to preserve the unity of said system as it has been for years maintained and operated, and preventing the disruption thereof by separate executions, attachments and sequestrations, the occurrence of which will be unavoidable in view of the inevitable defaults in interest and other payments which will soon occur, your orators

pray that this court will forthwith appoint one or more receivers of the entire system of railroads held, controlled, leased or operated by, or in the interest, or for the benefit of, the said defendant, The Union Pacific Railway Company, and of all the equipments, material, machinery, supplies, moneys, accounts, choses in action, shares of stock, bonds, property and assets of every description, and wheresoever situated, and of all said lands and land grants, leasehold, contractual rights and property belonging to the said defendant, The Union Pacific Railway Company, as well also as all those belonging to each of the defendants herein, and those of each of the said several companies controlled, leased or operated by, for or in the interest of said Union Pacific Railway Company, as a part of, or in connection with said system, with authority to manage and operate the same; and that each of the defendants and the officers, managers, superintendents, agents and employés of each of the defendants be required forthwith to deliver up the possession of all and singular each and every part of the said property, over which the receivers shall be appointed, wherever situate, also all books of accounts, office vouchers and papers in any way relating to the business or operation of said system of railways, and for an injunction restraining perpetually and during the pendency of this suit each of the defendants and every of the officers, directors, managers, superintendents, agents and employés of each of the defendants, and all persons whomsoever, from interfering in any way whatever with the possession and control of the receivers over any part of said property.

4. And that your orators may have such other and further relief as to the court may seem proper, and as may be necessary to fully enforce the rights and equities of your orators, and of all other creditors and stockholders of the defendant corporations.

N. S. HARWOOD,
JOHN H. AMES,
Solicitors for the Complainants.
DANA S. LANDER,
Of Counsel for the Complainants.

46 UNITED STATES OF AMERICA, }
District of Massachusetts, } *ss:*

Oliver Ames, 2nd, and Samuel Carr, executors, and Edwin F. Atkins, being first duly sworn, depose and say that they are the complainants above named; that the foregoing bill of complaint has been read by them, and that they know the contents thereof and that the same are true of their own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters they believe them to be true.

(S'g'd) OLIVER AMES, 2ND,
SAMUEL CARR,
EDWIN F. ATKINS, *Executors.*

Sworn to before me this 5th day of October, 1893.

[SEAL.] FRANK D. BUTRICK,
Notary Public.

The Union Pacific Railway Company—Funded Debt, December 31, 1892.

Class.	Trustees.	Interest payable.	December 31, 1892.		
			Issued and outstanding.	Owned by the company and held by trustees.	Afloat.
Union Pacific Railroad Co.:					
First-mortgage bonds	Fred'k L. Ames, F. Gordon Dexter.	Jan. and July	$27,229,000 00		$27,229,000 00
Land-grant bonds	Union Trust Co. of New York		(b) 8,000 00		(b) 8,000 00
Sinking-fund coupon bonds	Union Trust Co. of New York	March and Sept.	4,721,000 00		4,721,000 00
Sinking-fund registered bonds	Union Trust Co. of New York	March and Sept.	455,000 00		455,000 00
Omaha Bridge bonds	J. Pierpont Morgan, Fred'k L. Ames and Edwin F. Atkins.	April and Oct.	732,000 00	(c) $4,000 00	728,000 00
Collateral trust six per cent. bonds.	Union Trust Co. of New York	Jan. and July	3,775,000 00		3,775,000 00
Kansas Pacific Railway Co.:					
Eastern Division bonds	H. M. Alexander	Feb. and Aug.	2,240,000 00		(i) 2,240,000 00
Middle Division bonds	Adolphus Meier	June and Dec.	4,063,000 00		(i) 4,063,000 00
Denver Extension bonds	John A. Stewart, Wm. Endicott and August Rutten.	May and Nov.	5,887,000 00		(i) 5,887,000 00
Leavenworth Branch bonds	H. M. Alexander	May and Nov.	600,000 00	(d) 585,000 00	15,000 00
Consolidated mortgage bonds	Russell Sage, (a) George J. Gould.	May and Nov.	11,720,000 00		(j) 11,720,000 00
Income bonds	American Loan & Tr'st Co., Boston.	March and Sept.	263,700 00	(e) 242,450 00	21,250 00
Income bonds (subordinated)	American Loan & Tr'st Co., Boston.	March and Sept.	4,011,650 00	(f) 3,997,100 00	14,550 00
Cheyenne Branch bonds	Russell Sage, (a) George J. Gould.	May and Nov.	975,000 00	(g) 971,000 00	4,000 00
Denver Extension coupon certificates.		May and Nov.	385 00		385 00

Cheyenne Branch bonds.....	Kansas Pac., (b) Boston				
Denver Extension coupon certificates.	.....	May and Nov...	385 00	.....	385 00

48 Union Pacific Railway Co.:					
Trust five per cent. bonds.....	New England Trust Co., Boston.	June and Dec...	4,790,000 00	.....	4,790,000 00
Trust five per cent. bonds registered.	New England Trust Co., Boston...	June and Dec...	18,000 00	.....	18,000 00
Omaha Bridge renewal bonds	Central Trust Co., New York.....	April and Oct...	889,000 00	(h) 300,000 00	589,000 00
Equipment trust b'ds, series A.....	American Loan & Tr'st Co., Boston.	April and Oct...	358,000 00	.....	358,000 00
Equipment trust b'ds, series B... .	American Loan & Tr'st Co , Boston.	April and Oct...	1,263,000 00	.....	1,263,000 00
Equipment trust b'ds, series C.....	American Loan & Tr'st Co., Boston.	April and Oct...	671,000 00	(c) 671,000 00	
Kansas Division and collateral mortgage bonds.	Mercantile Trust Co., New York...	May and Nov...	5,000,000 00	(c) 5,000,000 00	
Collateral trust four and a half per cent. bonds.	New England Trust Co., Boston...	May and Nov...	2,037,000 00	(c) 237,000 00	1,800,000 00
Collateral trust six per cent. notes..	Drexel, Morgan & Co., New York.	Feb. and Aug...	15,976,000 00	(g) 183,000 00	15,793,000 00
Total.....	.....	.....	$97,682,735 00	$12,190,550 00	$85,492,185 00

(a) Appointed since the close of the year to fill the vacancy caused by the death of Jay Gould.
(b) These bonds were due April 1, 1889, but have not yet been presented for redemption.
(c) Owned by the company, and held by the trustees under the trust indenture of September 4, 1891, as part security for the collateral trust six per cent. notes.
(d) $582,000 of these bonds are held by the trustees under the Kansas Pacific consolidated mortgage, the balance, or $3,000, being owned by the company and in the hands of the treasurer.
(e) $241,200 of these bonds are held by the trustees under the Kansas Pacific consolidated mortgage, the balance, or $1,250 are owned by the company and held by the trustees under the trust indenture of September 4, 1891, as part security for the collateral trust six per cent. notes.
(f) $3,992,650 of these bonds are held by the trustees under the Kansas Pacific consolidated mortgage, the balance, or $4,450, being owned by the company and in the hands of the treasurer.
(g) Held by the trustees under the Kansas Pacific consolidated mortgage.
(h) These bonds are owned by the company, $145,000 being held by the trustees under the trust indenture of September 4, 1891, and $155,000 being in the hands of the treasurer.
(i) Of these amounts, $394,000 in Eastern Division bonds, $347,000 in Middle Division bonds, and $1,651,000 in Denver Extension bonds, on which the Union Pacific Railway Company pays interest, are held as investments in the Kansas Pacific Denver Extension sinking fund.
(j) The American Loan and Trust Company, trustee under the Kansas Pacific further security sinking fund, holds $116,000 of these bonds.

49 EXHIBIT B.

The Same Being Schedule "A," Annexed to and Part of the Trust Indenture of September 4, 1891.

Bonds.

	Par value.
Union Pacific, Denver & Gulf R'y Co. first-mortgage 5's	$8,823,000 00
Oregon Short Line & Utah Nor. R'y Co. consolidated 5's	3,971,000 00
Oregon Short Line & Utah Nor. R'y Co. col. trust 5's.	4,573,500 00
Utah & Northern R'y Co. first-mortgage 7's	353,000 00
Idaho Central R'y Co. first-mortgage 6's	91,000 00
Utah Southern R. R. Co. first mort., due July 1, '91, 7's	424,000 00
Utah Southern R. R. Extension first-mortgage 7's.	899,000 00
Union Pacific R. R. Co. Omaha Bridge 8's	5,000 00
Union Pacific R'y Co. Omaha Bridge Renewal 5's.	145,000 00
Union Pacific R'y Co. Kansas Division & col. mort. 5's	5,000,000 00
Union Pacific R'y Co. collateral trust 4½'s	237,000 00
Colorado Central R. R. Co. first-mortgage 7's	1,370,000 00
Colorado Central R. R. Co. first-mortgage 8's	22,000 00
Kansas City & Omaha R. R. Co. first-mortgage 5's.	4,595,500 00
Kansas Central R. R. Co. first-mortgage 6's	1,347,000 00
Loveland Pass Mining & R. R. Tunnel Co. first-mort. 7's	400,000 00
Manhattan, Alma & Burlingame R'y Co. first-mort. 6's	339,000 00
Echo & Park City Railway Co. first-mortgage 6's.	480,000 00
Omaha & Republican Valley R. R. Co. first-mort. 7's.	41,000 00
Omaha & Republican Valley R'y Co. con. mort. 5's.	520,000 00
Omaha & Republican Valley R'y Co. Extension 5's.	1,246,000 00
Union Pacific Coal Co. first-mortgage 5's	4,950,000 00
Green River Water Works Co. first-mortgage 6's.	223,000 00
Rattlesnake Creek Water Co. first-mortgage 6's	132,000 00
Union Depot Co., Spokane Falls, first-mortgage 5's.	300,000 00
Ogden Union R'y & Depot Co. first-mortgage 5's.	163,000 00
Western Pacific R. R. Co. (Cen. Pac.) first-mort. 6's.	12,000 00
Kansas Pacific, Denver Extension, first-mort. 6's	1,000 00
Kansas Pacific Railway Co. income 7's	1,250 00
St. Louis, Council Bluffs & Omaha R. R. Co. first-mort. 6's	19,500 00
Kearney & Black Hills Railway Co. first-mortgage 5's	105,000 00
City of Wichita, Kansas, 6's	42,556 00
Junction City, Davis county, Kansas, 6's	5,000 00
Oregon R'y & Navigation Co. first-mortgage consol. 5's	712,000 00

Oregon R'y & Navigation Co. collateral trust 5's..	1,632,000 00
Atchison Union Depot Co. second-mortgage 5's...	4,500 00
Denver, Leadville & Gunnison R'y Co. first-mortgage 4½'s...	23,000 00
Total bonds...	$40,207,816 00

Stocks.

Oregon Short Line & Utah Northern R'y Co.....	$14,990,703 33
Union Pacific, Denver & Gulf R'y Co...	13,251,882 00
Union Pacific Coal Co.....	5,000,000 00
Pacific Express Co.	2,400,000 00
Central Branch Union Pacific R. R. Co.....	874,200 00
Oregon Railway & Navigation Co.....	1,035,000 00
Carbon Cut-off Railway Co.....	220,000 00
Denver, Leadville & Gunnison R'y Co.....	3,000,000 00
Echo & Park City Railway Co....	480,000 00
Junction City & Fort Kearney R'y Co....	44,000 00
Kansas Central Railroad Co.....	1,313,400 00
Kansas City & Omaha Railroad Co.....	1,725,375 00
Laramie, North Park & Pacific R. R. & Telegraph Co.....	66,500 00
Lawrence & Emporia Railway Co	465,000 00
Leavenworth, Topeka & Southwestern R'y Co....	550,900 00
Manhattan, Alma & Burlingame R'y Co...	418,650 00
50 Montana Railway Co., 70 per cent. paid on $600,000....	420,000 00
Montana Union Railway Co.....	425,000 00
Omaha & Elkhorn Valley Railway Co..... ..	40,300 00
Omaha & Republican Valley R'y Co.....	2,327,523 77
St. Joseph & Grand Island R. R. Co.....	2,301,500 00
Salina & Southwestern Railway Co..... .	231,700 00
Union Pacific, Lincoln & Colorado R'y Co.....	1,997,800 00
Bozeman Coal Co.....	96,000 00
Green River Water Works Co.....	225,000 00
Morrison Stone, Lime & Town Co.....	100,000 00
Occidental & Oriental Steamship Co., 3 per cent. on $5,000,000.....	150,000 00
Omaha Union Depot Co., 10 per cent. on $75,000.	7,500 00
Rattlesnake Creek Water Co...	66,300 00
St. Joseph Terminal Railroad Co..... ...	25,000 00
St. Louis and Mississippi Valley Transportation Co.	116,000 00
Salt Lake Foundry & Manufacturing Co.....	67 00
Union Depot Co., Kansas City.....	21,000 00
Union Elevator Co., Council Bluffs....	46,700 00
Union Elevator Co., Omaha.....	81,000 00
Union Pacific and Western Colorado Railway Co..	400,500 00
Wood River Improvement Co., 80 per cent. on $100,000.....	80,000 00

Atchison, Colorado & Pacific R. R. Co.....	920,300 00
Atchison, Jewell County & Western R. R. Co....	105,000 00
Kearney & Black Hills Railway Co.....	337,966 91
Union Pacific Railway Co.....	177,450 00
Loveland Pass Mining & Railroad Tunnel Co....	4,800 00
Colorado Western Railroad Co.....	9,100 00
Gray's Peak, Snake River & Leadville R. R. Co..	6,000 00
South Park & Leadville Short Line R. R. Co.....	1,000,000 00
Western National Fair Association.....	7,950 00
Total stocks.....	$57,563,068 01

Miscellaneous.

Debt certificates of the Portland & Puget Sound R. R. Co.....	$969,245 98
Note of the Echo & Park City Railway Co.....	200,000 00
Note of the Union Depot & R. R. Co., Denver....	33,683 84
Notes of the Hutchinson & Southern R. R. Co...	768,500 00
Note of the Wood River Improvement Co.....	350,000 00
Note of the Union Depot Co., Spokane Falls.....	21,051 64
Total miscellaneous.....	$2,342,481 46
Grand total.....	$100,113,365 47

Thereupon afterwards, to wit, on said 9th day of October, 1893, the answer of the Union Pacific Railway Company was filed in said case, which said answer is in words and figures following, to wit:

Answer of The Union Pacific Railway Company, Defendant.

(Title of case and caption omitted.)

And now the defendant The Union Pacific Railway Company above named comes into court by its solicitor, and for answer to the bill of complaint of the above-named complainants respectfully shows to this honorable court:

First. The defendant admits that the plaintiffs are stockholders and creditors of the defendant corporation, as in said bill
51 & 52 bill of complaint alleged. It admits its incorporation and the construction or acquisition of its railroad system and property and their operation by the defendant, as in said bill of complaint alleged; it admits that its earnings have been falling off as in said bill of complaint alleged; that at the present time, and for some time past, the defendant's fixed charges and operating expenses have exceeded its gross earnings and receipts, as in said bill of complaint alleged; that there is no prospect in the near future of an increase in its gross earnings to an amount sufficient to enable the defendant to pay its operating expenses and fixed charges; that the defendant is so far insolvent; that it will not be able to pay the interest, sinking-fund charges, rentals and other debts falling due the remaining months of 1893 and January, 1894, as set out in the said bill of complaint; and that it will be compelled to make default in said payments on said days.

Second. The defendant further admits that the value of its railway system, land grants, franchises and property depends upon the same being preserved and operated as a unit, as in said bill of complaint alleged; that if the same be so preserved the debts due and to become due by the defendant to its several creditors can be secured and ultimately paid in full, as in said bill of complaint alleged; that in order so to preserve its said railway system, land grant, franchises and property it is necessary that the same should be taken into judicial custody, and that one or more receivers of the defendant, its property and franchises, should be appointed, and the defendant hereby consents to the appointment of one or more receivers, as prayed for in said bill of complaint.

Third. The defendant admits each and every allegation in said bill of complaint contained not hereinbefore specifically admitted.

Dated October 9th, 1893.

THE UNION PACIFIC RAILWAY CO.,
[SEAL.] By JAMES G. HARRIS, *Treasurer.*
Attest: ALEX. MILLAR, *Secretary.*

W. R. KELLY,
Solicitor for Defendant.

E. P. SMITH,
Of Counsel for Defendant.

Indorsed: Filed Oct. 9, 1893. Elmer D. Frank, clerk, by E. S. Dundy, Jr., deputy.

Thereupon afterwards, to wit, on the 3rd day of May, 1897, petition of Credits Commutation Company, for leave to intervene was filed in said case, which said petition is in the words and figures following, to wit:

UNITED STATES CIRCUIT COURT.

DISTRICT OF NEBRASKA.

IN EQUITY.

UNITED STATES OF AMERICA, *Complainant,* vs. UNION PACIFIC RAILWAY COMPANY, ET AL., *Defendants.*	No. 157 S. IN EQUITY.
F. GORDON DEXTER AND OLIVER AMES, SECOND, TRUSTEES, *Complainant,* vs. UNION PACIFIC RAILWAY COMPANY, ET ALS., *Defendants.*	No. 48 R. IN EQUITY.
OLIVER AMES, SECOND, AND SAMUEL CARR, EXECUTORS, ETC., ET ALS., *Complainants,* vs. UNION PACIFIC RAILWAY COMPANY, ET ALS., *Defendants.*	No. 94 Q. IN EQUITY.

PETITION OF CREDITS COMMUTATION COMPANY FOR LEAVE TO INTERVENE IN THE ABOVE-ENTITLED CAUSES.

PART ONE.

OF THE PETITIONER'S STANDING AND INTERESTS.

RESPECTFULLY REPRESENTS your petitioner:

(1) That your petitioner is a corporation duly organized under the laws of the State of Iowa and is a citizen of that State, having its place of business in Sioux City in said State.

(2) Your petitioner owns all the stock of a combined railroad and wagon bridge recently completed across the Missouri river at Sioux City, at a cost of about a million and a quarter of dollars, and as beneficiary under an assignment, is entitled to three-quarters of the capital stock of the Sioux City and Northern Railroad Company, which has lately constructed, at a cost of about two millions, a railroad extending northerly from Sioux City about one hundred miles to a junction with the Great Northern Railroad, over whose lines it makes connection with the head of the Great Lakes at Duluth; also all the stock of another railroad company called the Sioux City, O'Neill & Western, built at about the same time at a cost of about two millions and a half, running one hundred and thirty miles west from Sioux City, Iowa, to O'Neill in Nebraska, which railroads are connected by the aforesaid bridge of your petitioner; also, the stock of said Sioux City and Northern Railroad Company also carries with it all the stock of a Terminal Company owning large and valuable terminal properties recently constructed in said Sioux City at a cost of about two mil-

lions, designed to accommodate the railroads aforesaid, and all other railroads running into Sioux City; and substantially all interests in said properties of alleged priority to the interest of your petitioner therein are claimed by your petitioner, but are in controversy and involved in pending litigation; and your petitioner owns or has a controlling interest in certain other extensive industries in said Sioux City, dependent upon railroad facilities and the rates of fare thereof, so that the cost of all the undertakings aforesaid represented by your petitioner herein amounts to about ten million dollars. And your petitioner is also representative of other interests hereinafter mentioned, which, your petitioner submits, entitles it to standing herein.

(3) And your petitioner shows that the comprehensive design and single purpose of all said quasi public enterprises of your petitioner was to promote and accommodate an interchange of traffic and transportation between the country west of the Missouri river at Sioux City and the head of lake navigation at Superior and Duluth, and that the usefulness and value of all said railroad terminal and bridge properties depend, for the most part if not almost wholly, upon such connection as may be made between the same and the main line of said Union Pacific Railroad, and upon the place of such connection, and the just and equitable terms thereof.

(4) That your petitioner was organized and acquired said properties and completed said bridge for the purpose, among others, of securing a connection thereof with said Union Pacific Railroad by building or causing to be built or extended a railroad from said Sioux City in a general southwesterly direction to a junction with said Union Pacific Railroad as aforesaid.

Your petitioner is also the owner of one of the first mortgage bonds hereinafter mentioned of the Union Pacific Railroad Company, and brings this petition for the protection of its several interests herein, for itself and all others in like situation who may choose to join in this petition.

(5) Said defendant, the Union Pacific Railway Company, purports to be a consolidated company, the constituents whereof were the Union Pacific Railroad Company and the Kansas Pacific Railway Company, which last-named company was, by assignments, transfers, and change of names, successor to a number of predecessor companies.

(6) Said Union Pacific Railroad Company was created by a certain Act of Congress, called the Act of July 1st, 1862, by which Act said Union Pacific Railroad Company and the predecessors of said Kansas Pacific Railway Company, and certain other companies, to-wit, the Central Pacific and the Western Pacific Railroad Companies, were authorized to co-operate in building a single and entire line of railroad and telegraph with three branches on the east which were to converge from Sioux City, Council Bluffs, and Kansas City, all on the Missouri, to a common junction to the westward thereof on or near the one hundredth meridian of longitude, and thence to extend westerly in a single trunk line to the Pacific Ocean.

(7) And that "to secure to the government the use of the same for postal, military, and other purposes," Congress, in and by said Act, conferred upon said companies grants of vast and valuable tracts of the public lands, and certain rights, privileges, and franchises, and

further subsidized said companies by a large advance to them of the public credit in the form of the bonds of the United States, all to aid in the construction of said roads.

PART TWO.

OF THE PUBLIC AND QUASI-PUBLIC OBLIGATIONS OF SAID UNION PACIFIC RAILWAY COMPANY, ESPECIALLY PERTINENT TO THE RIGHT OF YOUR PETITIONER TO INTERVENE IN THE FIRST OF THE ABOVE ENTITLED SUITS—THAT ONE BROUGHT BY THE UNITED STATES.

(8) All the grants, rights, privileges, and franchises aforesaid were made to said companies on condition that said companies should pay said subsidy bonds at the maturity thereof; and to secure the payment of said bonds and interest thereon, a statutory first mortgage or lien was by said Act created upon the roads and properties of said bond-aided Pacific Railroad Companies, and further, by said Act and in consideration of the public aid aforesaid, certain duties, obligations, and servitudes were imposed upon said companies, their successors and assigns, and upon the railroad constructed by them and the operations thereof, and were by said companies assumed in the acceptance of said Act.

(9) Your petitioner, showing that the public credit and domain are not subject to disposition by the government for the general benefit of the government as such, but only for limited purposes of the government, and may for the most part be disposed of only in consideration of benefits to be thereby secured to the public generally, or such of the public as may wish, or have any peculiar interest, to avail of such benefit, and may not be disposed of by the executive department of the gov-

ernment at all without the authority of Congress, says that certain public and quasi public duties, obligations and servitudes were imposed upon said bond-aided Pacific Railroad Companies and their respective railroads in consideration of the public aid and grants rendered to them by the United States as aforesaid, in most of which your petitioner has interests in common with the public and special and peculiar to itself, all of which are put in jeopardy as hereinafter stated and for the protection or defence of which no party appears in said proceedings. Your petitioner says that said public and quasi public duties, obligations and servitudes are divisible into classes substantially as follows:—

First: Such as are due to such of the public as may wish or have any peculiar interest to avail of the benefit of performance.

Second: Such as are due to certain sections of the country.

Third: Those due both to the government as such and to the public.

Fourth: Those not due to the government as such, and the benefit whereof is intended to inure wholly to the public.

Fifth: Those due to the government as such, but in the performance whereof the public or some of the public have general or peculiar interests.

Sixth: Those due to the government as such, and in which the public or any member of it has no interest.

OBLIGATIONS OF SAID COMPANY DUE TO THE PETITIONER.

FIRST: BECAUSE OF ITS OWN SPECIAL OR PECULIAR INTERESTS.

(10) Among the duties, obligations and servitudes first above described, performance whereof is due to such of the public as may wish or have any peculiar interest to avail of the benefit thereof, are those contained in the fifteenth section of said Act of July 1st, 1862, as follows—

"Sec. 15. AND BE IT FURTHER ENACTED, That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon such just and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto."

Your petitioner shows that, by the provisions aforesaid, the President of the United States must fix the place of connection with said Union Pacific Railroad before any company desiring the same can be sure that its incorporated location will conform therewith.

(11) Your petitioner was organized in the latter part of the year 1894, but has abstained from making any application to the President of the United States to fix the place at which and the just and equitable terms upon which your petitioner should build a railroad to connect with the road of said Union Pacific Railway Company; because said company had become embarrassed and all its property was and ever since has been in the hands of receivers appointed by this Court, and said company was and ever since has been apparently insolvent, and bills in equity have been filed, in this Court and others,

to obtain foreclosure in behalf of certain alleged first mortgage bonds purporting to have been secured by liens and mortgages upon the road of said company; under which circumstances any such application would seemingly have been ill-timed and unavailing. And especially has your petitioner thus abstained, for the further reason that the obligations of said railroad company to pay certain subsidy bonds hereinafter mentioned has been in the meantime maturing, and legislation to adjust the indebtedness thereof and to avail of the security therefor and to provide for a reorganization of said company has been constantly pending before Congress, to which tribunal, as the more appropriate to safeguard your petitioner's interests, your petitioner has constantly appealed by appearing before committees of both branches of Congress, and thus and otherwise urging the enactment of just and suitable laws for the protection of your petitioner's said interests; and while thus engaged and while the Congress was intent upon the matter, your petitioner was surprised with the information that the Attorney-General had entered into an agreement to prosecute and submit to foreclosure sales of or under the lien of the United States, and other alleged liens upon the property of said Union Pacific Railway Company securing said subsidy bonds and certain other bonds asserting a lien in priority to the lien of the United States, and had filed his bill in behalf of and purported to have entered an appearance for the United States in the foreclosure suits aforesaid to effect such sale of said Union Pacific Railroad.

(12) Your petitioner, to protect the interests peculiar to itself as aforesaid against the threatened danger of any deprivation of a right to build its railroad to and to

connect the same with said Union Pacific Railroad on just and equitable terms, as aforesaid, by any foreclosure sale in the premises, asks to be admitted a party hereto.

SECOND: OF THE DUTIES OF SAID BOND-AIDED PACIFIC RAILROADS TO DIFFERENT SECTIONS OF THE COUNTRY.

(13) Further, your petitioner submits that the local and peculiar public interests represented by your petitioner practically determine the place at which and the just and equitable terms upon which your petitioner should be allowed to build or extend a railroad to a junction with the Union Pacific Railroad under the provisions of the act above quoted.

(14) Your petitioner says: That a purpose is declared in said Act of July 1st, 1862, and in the debates of Congress, whereby the passage thereof and of other acts amendatory thereto were secured to give to all sections of the country east of the Missouri river and to the existing and prospective railroad systems thereof participation in and equal aids and facilities to avail of the benefit of the transcontinental transportation to be afforded by the national aid rendered to said Pacific Railroads; and to that end it was provided in said act that the eastern terminus or initial point of the trunk line of said Pacific Railroads should be at the one-hundredth meridian of longitude, from which three branches should diverge to points on the north and south trend of the Missouri river, from and between Sioux City on the north

and Kansas City on the south, which were to compose two of said branches; and Council Bluffs was afterwards named as the easterly end of the third branch. That the provision in behalf of Sioux City and the middle Northwest is in Section 14 of said Act of 1862, as follows:—

"And whenever there shall be a line of railroad completed through Minnesota or Iowa to Sioux City, then the said Pacific Railroad Company is hereby authorized and required to construct a railroad and telegraph from said Sioux City upon the most direct and practicable route to a point on, and so as to connect with, the branch railroad and telegraph in this section hereinbefore mentioned, or with the said Union Pacific Railroad, said point of junction to be fixed by the President of the United States, not further west than the one-hundredth meridian of longitude aforesaid, and on the same terms and conditions as provided in this act for the construction of the Union Pacific Railroad as aforesaid, and to complete the same at the rate of one hundred miles per year; and should said company fail to comply with the requirements of this act in relation to the said Sioux City railroad and telegraph, the said company shall suffer the same forfeitures prescribed in relation to the Iowa branch railroad and telegraph hereinbefore mentioned."

(15) That afterwards, by a certain other act, known as the Act of July 2nd, 1864, said Kansas City branch was allowed to proceed straight west from that city to Denver, and thence to connect with the main line of said Union Pacific Railroad at Cheyenne; substantially like rights and on similar conditions to connect the Sioux City branch at a point further west than the one hundredth meridian were also accorded, and the Union Pacific Railroad Company was relieved from building the same; all in Section 17 of said Act of July 2nd, 1864, as follows:—

"And be it further enacted, That so much of section fourteen of said Act as relates to a branch from Sioux City be, and the same is hereby, amended so as to read as follows: That whenever a line of railroad shall be completed through the States of Iowa, or Minnesota, to Sioux City, such company, now organized, or may hereafter be organized, under the laws of Iowa, Minnesota, Dakota, or Nebraska, as the President of the United States, by its request may designate or approve for that purpose, shall construct and operate a line of railroad and telegraph from Sioux City, upon the most direct and practicable route to such a point on, and so as to connect with, the Iowa branch of the Union Pacific Railroad from Omaha, or the Union Pacific Railroad, as such company may select, and on the same terms and conditions as are provided in this act and the act

to which this is an amendment, for the construction of the said Union Pacific Railroad and telegraph line and branches; and said company shall complete the same at the rate of fifty miles per year; Provided, That said company constructing said branch shall not be entitled to receive in bonds an amount larger than the said Union Pacific Railroad Company would be entitled to receive if it had constructed the branch under this act and the act to which this is an amendment; but said company shall be entitled to receive alternate sections of land for ten miles in width on each side of the same along the whole length of said branch."

(16) Your petitioner says that said amendment was not intended or understood to vary the general location or direction of said Sioux City branch, and that the construction thereof would have afforded to Sioux City and the middle Northwest and the head of lake navigation more than three hundred miles of as direct western connection with the Union Pacific as that secured to and enjoyed by the other sections of the country served by the other branches; that the scope of said acts to the general intent aforesaid and including the contemplated location and direction of said Sioux City branch was after both said acts were passed in effect judicially declared by the Supreme Court in the case of Union Pacific Railroad Company v. Hall, 91 U. S., 343.

(17) Your petitioner begs to call attention to the fact that not only the towns at the three eastern termini of the branch lines aforesaid were intended to be equally and alike benefitted by connection with the trunk line aforesaid, but that provision was made for participation therein by all other prospective railroad centers on the stretch of the Missouri river above mentioned; the company which was to build the Kansas City branch was required either to locate said road by way of Leavenworth, or to build a branch to Leavenworth; a line from St. Joseph was either to reach the Pacific Railroad's system by way of Atchison, from which last-named place

a connecting line was also to be subsidized, or an unsubsidized line from St. Joseph could be built to a direct connection with said Union Pacific Railroad.

(18) And your petitioner shows that said three bond-aided branches were to enjoy certain advantages and privileges of great and almost inestimable value to themselves and the sections of the country to be served by them, especially as set forth in the fifteenth section of said Act of July 2, 1864, as follows:—

"Sec. 15. AND BE IT FURTHER ENACTED, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and the Government are concerned, as one continuous line; and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others."

(19) But your petitioner says that the section and traffic to be served by the branch from Sioux City were substantially deprived of the promised connection with said Pacific roads and are threatened with an extinction of all the rights and protection secured to all the branches alike in said fifteenth section of said Act of 1864 aforesaid, by the declared purpose in the above-entitled causes to procure a sale of the rest of said Union Pacific Railroad, without including therein and as a part thereof any connection with Sioux City and the middle Northwest whatever.

(20) To show more explicitly the sectional grievances of the middle Northwest and Sioux City and the injury to the then existing and prospective traffic and business thereof and to your petitioner, your petitioner says that, under the provisions of said Act of 1864 hereinbefore mentioned, the President designated a corpora-

tion known as the Sioux City and Pacific Railroad Company to build said Sioux City branch, which company had already theretofore surveyed a location for a road of its own, ostensibly as a feeder—which, in fact, it always has been—to another railroad, known as the Chicago and Northwestern, then building across said State of Iowa to a prospective junction with the Council Bluffs branch of the Union Pacific Railroad at or near Fremont in the State of Nebraska, both which feeder and said Chicago and Northwestern Railroad were apparently, and your petitioner on information and belief alleges were, in truth and in fact, owned and controlled by substantially the same men and in a common interest.

(21) And your petitioner, on information and belief, says that the officers and controllers of said Sioux City and Pacific Railroad Company, conspiring and confederating to divert the grants and subsidies of the government from aid to the construction of the Sioux City branch of said Union Pacific Railroad on the true and contemplated line and location thereof aforesaid, and to avail of the same for the building of said feeding line to said Chicago and Northwestern, and to aid in the extension of the latter, made and procured to be made to the departments of the government whose sanction and approval were necessary in the premises, misrepresentations in substance and effect that high and precipitous bluffs on the banks of the Missouri river opposite Sioux City, and the absence of any valleys or ravines through the same, and the presence of formidable hills and reservations occupied by possibly hostile Indians, and other and like moral, physical and other insurmountable obstacles prevented the construction of the Sioux City branch of said Union Pacific Railroad along the line and

location contemplated by the laws relating thereto, and misrepresentations to the effect that the most direct and practicable route for such connection was on the line already theretofore selected for its own road by said Sioux City and Pacific Railroad Company, and then over the Chicago and Northwestern Railroad, which it was to join, through to Fremont aforesaid; and having by such means procured the acceptance of said location, it constructed said branch on its own location aforesaid, whereby the same was made to run from Sioux City in a general southeasterly direction away from the Pacific down the eastern bottom-lands of the Missouri river about seventy miles, at which point it is twenty or thirty miles further from the Pacific than when it started; and there joining the Chicago and Northwestern Railroad, it proceeds west, supplementing and extending the last-named railroad to Fremont, where, after completing a total length of but little over one hundred miles from Sioux City, it ended almost due south thereof in a junction with the Council Bluffs branch of said Union Pacific aforesaid.

(22) None of the alleged obstacles to the construction of said branch on the location contemplated by the Acts of Congress did in fact exist. The mislocation of said branch and misdirection of the government's aid aforesaid at once became and ever since have been of public notoriety and a cause of constant protest and complaint on the part of sections immediately affected, the public records whereof are too voluminous to permit any exhaustive recital thereof herein; but your petitioner begs leave to call attention at the hearing in support hereof, to the reports of committees and commissions appointed by Congress, and the reports of the various de-

partments of the government, the debates in Congress, and the resolutions of the legislatures of the Middle Northwestern States thereon. Wherefore, your petitioner submits that said Sioux City and Pacific Railroad Company did "not complete the said branch from Sioux City to the Pacific Railroad within ten years from the passage of this act (of July 2, 1864, Sec. 17) as contemplated by the provisions of this act"; and for that reason by said section of said act, "all the railroad which shall have been constructed by said company shall be forfeited to and become the property of the United States."

(23) The Middle Northestern States were in manner aforesaid and ever since have been cut off from the connection with the Pacific Railroad systems as contemplated, and, to correct this wrong, or, at least, to prevent a continuance of the consequent discrimination against that section and Sioux City, your petitioner, when said Pacific Railroad Companies were becoming bankrupt and in default in their obligations to the United States, sought relief from Congress, whereby the promised connection aforesaid might be secured in any reorganization of said companies or their properties which Congress should permit; and in furtherance of their just demands represented by your petitioner aforesaid herein, business associations and the people in the towns and cities and associations in the Middle Northwestern States supported your petitioner, with petitions and memorials addressed to Congress, to which your petitioner craves leave to refer at the hearing.

(24) While your petitioner was seeking the aid of Congress in the premises, the Attorney-General filed his bill in the first of the above-entitled suits for foreclosure

sale and purported to enter his appearance for the United States in the second of said suits; in both which proceedings it is the manifest and declared purpose to sell the trunk line of said Union Pacific Railroad, together with the branches thereof aforesaid from Kansas City and from Council Bluffs as one property and an entirety, whereby said branches and the cities and sections at the eastern terminus and along the lines thereof will preserve their connection with said Union Pacific Railroad and participation in its business as contemplated, but it is not intended and is impossible, for want of default, to include in said sale as a part thereof the line of said Sioux City and Pacific Company, so that even that pretended but inadequate connection of Sioux City and the Middle Northwest with said Union Pacific Railroad as a part thereof and entitled to the terms of connection aforesaid will in any such sale be taken away.

(25) Your petitioner, showing that there are now large railroad systems entering Sioux City, and which have no connection with said Pacific Railroad, and that your petitioner owns or controls the best and practically the only terminals, bridges and facilities in the Middle Northwest to accommodate such connection, and being desirous of building a railroad to effect the same, begs leave to intervene herein to protect its right so to do, and either to prevent any foreclosure sale of the Union Pacific Railroad, or to secure in any decree therefor, among other just and equitable terms of the right to connect therewith, the benefit of the provision of the laws above quoted, just as if your petitioner's proposed road had been built in place of said Sioux City and Pacific Railroad, which cannot be sold in said foreclosure proceedings, and otherwise to protect the interests owned and

represented by your petitioner in the premises against the risk of any deprivation of any of the same by any foreclosure sale herein.

THIRD: OF THE OBLIGATIONS OF SAID BOND-AIDED RAILROADS DUE BOTH TO THE GOVERNMENT AS SUCH, AND TO THE PUBLIC.

(26) Your petitioner begs leave to submit as a proposition supported by the law and facts relied upon in every part of this petition, that in contemplation of the government and the people, the bond-aided Pacific Railroad Companies built but one railroad, and none of it can be sold separate and apart from the rest; that your petitioner, as owner and controller of large shipping and receiving interests hereinafter explained, is entitled to standing in its own right, without intervention of the United States, and beyond their control, except by act of Congress, to have the unity of the system of roads preserved.

(27) In addition to the acts hereinbefore quoted, which show the unity of the road, attention is called to other like provisions. The title of said Act of 1862 is: "An Act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean and to secure to the government the use of the same for postal, military, and other purposes."

The acts constantly speak of it as one railroad. By Section 12 of the Act of 1862, "The track upon the entire line of said railroad and branches shall be of uniform width * * * so that, when completed, cars can be run from the Missouri River to the Pacific Coast." The building companies had few or no separable and inde-

pendent rights, but they could consolidate, and, under certain conditions, the location of either could be changed by others so as to make it conform to their own, both as to branches (Sec. 9, Act 1862) and the meeting of trunk lines (Sec. 12, Act 1864; Act of July 3, 1866; Act of May 6, 1870). If any of said companies failed to build fast enough to complete its alloted part in the time limited for that purpose, the others, one or more, could build in its place, and, finally, the ones that built the fastest could build the most (Section 10, Act 1862; Sections 12 and 16, Act 1864; Act July 3, 1866).

The place for connection of the eastern and western ends was fixed three times by Acts of Congress (Sections 1 and 9, Act of 1862; Sec. 12, Act of July 2, 1864, and Act of May 6, 1870.) The companies respectively were required to transport the materials required by each other at cost (Section 12, Act of 1862.)

This idea of one road was carried so far that, by Section 17 of said Act of 1862, it was—

"Provided, That if said roads are not completed, so as to form a continuous line of railroad, ready for use, from the Missouri River to the navigable waters of the Sacramento River, in California, by the first day of July, eighteen hundred and seventy-six, the whole of all of said railroads before mentioned and to be constructed under the provisions of this act, together with all their furniture, fixtures, rolling stock, machine shops, lands, tenements, and hereditaments, and property of every kind and character, shall be forfeited to and be taken possession of by the United States."

Though this harsh provision was modified by Section 7 of the Act of 1864, insistance upon the unity of the road was not in any way relaxed, and the condition was retained, that for a failure to complete the whole, or for any failure afterwards—that is, now or hereafter—to keep the whole in repair, the United States could and can take the whole and use the income of the whole to repay the expenses of such repair (Sect. 17, Act 1862).

(28). Among other obligations and servitudes to preserve the unity aforesaid imposed upon said companies and road, and which are expressly due both to the government as such, and to the public, is the following, from Section 12 of the Act of 1862, substantially repeated in Section 15 of the Act of 1864:

"The whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the government and the public are concerned, as one connected, continuous line."

Attention is called to the fact that even though it be held that the lien of the subsidy bonds does not extend over any but bond-aided lines (United States v. Kansas Pacific Railway Company, 99 U. S., 455), yet the rights of the government in and to the use of the roads were secured by the grants of land rather than by the bond subsidy. Act, July 1st, 1862, Sec. 3. And the continuity of the whole was insisted upon.

By the Act of March 3rd, 1869, lands were granted to the companies building the extension of the Kansas Pacific line from the three hundred and ninety-fourth mile post west by way of Denver to Cheyenne, and it was enacted that:

"All the provisions of law for the operation of said Pacific railroad as a continuous line should apply to said extensions."

In the case of the United States v. Union Pacific Railway Company, 148 U. S., 562, the company successfully contended that the foregoing line was "continuous" within the acts aforesaid, the Court saying that the builders were "two corporations engaged in a construction of the same line of road."

(29). That said Section 15 of the Act of July 2nd, 1864, hereinbefore quoted, which secured co-operation between the roads and branches without discrimination

and re-enacted that they were to be operated as a continuous line, was by an Act of June 20th, 1874, amended so as to make it a criminal offense for those having the roads in charge to refuse so to operate them, and imposed punitive damages on the companies in behalf of anybody aggrieved by the refusal, and by the same act the Denver and Cheyenne connection was again made a part of the continuous line.

And that by Section 11 of the Thurman Act (May 7, 1878), the failure of any of the companies to perform the requirements of any of the acts aforesaid, for a period of six months, should operate as forfeiture of all rights, privileges, grants, and franchises derived or obtained from the United States.

(30). Wherefore, your petitioner shows that "so far as the government is concerned," any sale of the Union Pacific Railway or any part thereof without the contemporaneous sale of the whole, including the Sioux City branch thereof, and the Central Pacific Railroad too, and by which sale the whole or any part of either should pass to a purchaser free from the foregoing obligations, and that any operation of either or any part of either of said roads, as if so freed, would not only defeat the declared purpose of all aid rendered by the government, but would constitute a crime against it punishable by the imprisonment of the natural persons and the death and forfeiture to the government of the franchises and property of the offending company.

(31). That "so far as the public is concerned," such sale and operation subjects the offending company to punitive damages (Sec. 15, Act of July 2nd, 1864; Act of June 20, 1874). That by the act of May 3rd, 1873, any

Circuit Court of the United States can issue mandamus to the Union Pacific Railway Company to compel such continuous operation. That this applies to the branches as well as the main lines. That the mandamus shall issue on the application of your petitioner, to which proceedings the United States are not a pertinent party, all as held in

Union Pacific R. R. Co. v. Hall, 91 U. S., 343.

(32). Your petitioner calls attention to the fact that the foregoing case expressly recognizes the right of Sioux City to branch connection just like that then sustained by the court, and your petitioner submits as obvious that any foreclosure sale of all the rest of said Union Pacific Railroad separate and apart from the Sioux City branch, would be wholly destructive of the right aforesaid.

(33). Your petitioner is interested, as was the defendant in the above entitled case, in the act above quoted; as are also all the shippers and receivers of goods in said Sioux City and the country round about there, by transportation over the line of said Pacific Railroad; and especially has your petitioner an interest for this, that it owns the most valuable and controlling interest in the Sioux City Stock Yards Company, on which are located many large packing plants, making Sioux City one of the large packing points in the country, and constituting the principal industry of that city, and animals to supply the products thereof are, and under favorable connections and reasonable rates of fare, would be, largely drawn from the territory occupied by said Pacific Railroads.

FOURTH: OF THE OBLIGATIONS OF SAID COMPANY NOT DUE TO THE GOVERNMENT AS SUCH, THE BENEFIT WHEREOF IS INTENDED TO INURE WHOLLY TO THE PUBLIC.

(34). Among other provisions of the acts for aiding said Pacific road, which secures the unity thereof, and to inure to the benefit of the public rather than to the United States as such, is the following from Section 18 of the Act of July 1, 1862:

"Sec. 18. AND BE IT FURTHER ENACTED, That whenever it appears that the net earning of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs, and the furnishing, running, and managing of said road, shall exceed ten per centum upon its cost, exclusive of the five per centum to be paid to the United States, Congress may reduce the rates of fare thereon, if unreasonable in amount, and may fix and establish the same by law."

(35). Your petitioner begs to call attention to the fact that this act requires the earnings of the "entire road" to be united and when such earnings exceed ten per centum upon its cost, Congress may reduce the rates of fare thereon, that is, on the "entire road."

(36). Your petitioner further shows that the reservation of power was not for the benefit of the United States and to secure the payment of its debt but obviously the reverse, and, in the sole interest of the public; for the earnings to be taken into account as aforesaid expressly include compensation for service rendered to the Government by the roads, which compensation, by other provisions of said act, was to be retained for the payment of the subsidy bonds and interest, the amount of which retention would be reduced by a reduction of rates of fare. It also contemplates that a reduction of rates of fare will necessarily reduce the five per centum of net earnings also to be paid to the government.

(37). And your petitioner, interested in the rates of fare on said road as aforesaid, submits that its right, in common with the right of all the public similarly situated, to petition Congress for the exercise of the power reserved to it as aforesaid, and the power of Congress to comply therewith cannot be taken away by a sale of said road, and especially not by a sale of a part thereof and the dismemberment of the same merely on the consent of the executive department or law officers of the government.

(38). Your petitioner submits that the powers and discretions which the Government and the President and the Congress and the Courts may exercise in the premises as hereinbefore set forth constitute a trust for the benefit of the public, the observance whereof is secured as a perpetual servitude imposed upon said railroads as an entirety, and should run with their properties and franchises as an entirety, to which all mortgages are subject, which the redemption of the subsidy bonds by the companies receiving the same would not terminate, and which, without authority from congress, the executive department of the Government should not attempt to extinguish by any sale in behalf of the Government's lien; and subject to which the Government would take the property in any forfeiture to or strict foreclosure in behalf of the United States, since the Government should itself be so bound as contemplated in the last part of Section 15 of the Act of 1862, even if provision in behalf of the public be not applicable to any other successor of said Union Pacific Railroad Company.

FIFTH: OF THE OBLIGATIONS OF SAID RAILROAD COMPANIES DUE TO THE GOVERNMENT AS SUCH, BUT IN THE PERFORMANCE WHEREOF

THE PUBLIC, OR SOME OF THE PUBLIC, HAVE A GENERAL OR SPECIAL INTEREST.

(39). Notwithstanding the contention of this petitioner that the rights and interests of the public and of your petitioner as a member thereof in said Pacific Railroad as hereinbefore stated would survive any foreclosure sale of said road in pursuance of any mortgage upon the same or any part thereof, yet your petitioner is apprehensive that if the government were to subject its interests in said road to sale to a stranger, such purchaser might claim that the right of the President of the United States to fix the place at which and to prescribe the just and equitable terms upon which your petitioner could connect a railroad with said Pacific Railroad was a power in the President, coupled with the interest of the United States; and that, upon such voluntary parting with that interest, the exercise of such a power would be a mere judicial function which could not be imposed upon the chief of the Executive branch of the Government, and, in like manner, that the right of Congress to reduce the rates of fare on said railroad was also a power coupled with an interest, and after such sale would be become a judicial function which could not be imposed upon the legislative branch of the government, and that the provision whereby the government may take the entire road and devote all its earnings to keep the whole in repair should, as a like power, be also lost by a sale of any part of said road with the Government's consent, and that the right of the Government to insist that said railroad shall be operated and used as a connected, continuous line from the Missouri river to the Pacific Ocean should be held to have been waived by a voluntary sale of a part and dismemberment of said road by or in be-

half of the United States; and your petitioner submits that an auction sale of said road by the United States, with no restrictions except to the highest bidder, would not only terminate the right of Congress to amend, alter, and repeal said Act of July 1st, 1862, as, by Section 18 of said Act, Congress may now do to promote the public welfare by keeping said railroad in working order for the use of the government at all times and particularly in time of war, but would even enable the contemplated enemy in such a war to become the purchaser.

(40). Your petitioner submits that, while the United States retains its interest in said railroad, or if said Companies shall simply discharge their financial obligations to the United States, as originally intended, none of the foregoing contentions can be raised, and that no sale of the interest of the United States should be made or suffered without the authority of Congress and the enactment of such laws for the protection of the government and public in the premises as Congress may see fit to impose as a condition of such sale.

Wherefore, your petitioner is interested in the lawful manner of the enforcement of the obligations of said Pacific Railroad Companies which are due to the United States as such.

(41). Your petitioner says that said bond-aided railroad companies are under obligation to redeem at maturity the subsidy bonds received by them, and concedes that this undertaking pertains to said companies severally to redeem the bonds they respectively received; that a failure of any company to do so does not work forfeiture, as hereinafter mentioned, by any other company (see Section 7, Act of 1864); that that obligation is due to

the United States as such, and that the enforcement of remedies for breach of the obligation is the duty of the law officers of the Government alone; and that the scope of their duties in any case wherein it is sought to proceed against any interest of the United States in a Federal Court, is to suggest such interest to the Court (Stanley v. Schwalby, 147 U. S., 508), whereupon it becomes the duty of the Court to protect that interest if possible, and, if not, then to decline further jurisdiction in the case (Cunningham v. Macon R. R. Co., 109 U. S., 446), all without appearance or suggestion by friends of the Court or other parties to the suit.

(42). But your petitioner relies upon the right which any party in interest has to the writ of mandamus from the Courts of the District of Columbia to compel the Attorney-General or any other cabinet officer of the Government to perform any duty whereunto he is expressly commanded (U. S. ex rel Oscar Dunlap v. Black, 128 U. S., 40); and to a writ of injunction from said Court to restrain such officer from disregarding or violating any such command.

Noble v. Union River Logging R. R. Co., 147 U. S. 165.

(43). And your petitioner submits that in a proper case in which the rights or property of the government is involved in a Federal Court which cannot issue mandamus or injunction to the Attorney-General as aforesaid, any party interested in the performance by the Attorney-General of any duty whereunto he is commanded, and which he neglects or refuses to perform, should have standing of necessity to make suggestions to the Court of the duty of the Attorney-General, so that the

proceedings may conform thereto, or, if not so, then such party should have standing to proceed against any private citizens confederating or co-operating with the Attorney-General to secure the avoidance by him of his duty, and to have such private citizens enjoined.

(44). Your petitioner submits that this should be especially true in the case at bar, because of the express provision of Section 10 of the Act of Congress known as the Thurman Act (May 7, 1878), relating thereto, as follows:

"Sec. 10. That it is hereby made the duty of the Attorney-General of the United States to enforce, by proper proceedings against the several railroad companies respectively or jointly, or against either of them, and others, all the rights of the United States under this act and under the acts hereinbefore mentioned, and under any other act of Congress or right of the United States; and in any suit or proceedings already commenced, or that may be hereafter commenced, against any of said companies, either alone or with other parties, in respect of matters arising under this act, or under the acts or rights hereinbefore mentioned or referred to, it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to."

And your petitioner shows that the first of the above-entitled suits is within the provision of said Act, and that there are other proceedings against said Union Pacific Railway Company pending in the second and third of the above-entitled suits, such as may authorize or require the intervention of the Attorney-General therein under the Act aforesaid.

(45). And thereupon your petitioner begs leave to show that said Union Pacific Railway Company, all its property and assets were, in or about the spring or summer of the year 1893, put into the hands of receivers appointed by this Court in the third of the above-entitled suits.

(46). That said company then and for a long time theretofore was and ever since has been insolvent, without money, and unable to pay its indebtedness, and ever since the appointment of said receivers has been out of the operation and control of the said railroad and wholly unable to comply with and has not by itself complied with any of its duties and obligations in respect of the operation thereof, and that all requests, requirements, and demands upon it by itself to perform the same are and ever since the appointment of said receivers have been necessarily and notoriously useless and unavailing.

(47). But your petitioner is ignorant as to whether said Union Pacific Railway Company is in any default to the United States merely for failure to redeem any of said subsidy bonds, or to pay the interest thereon; on a correct application of the theory of accounting apparently adopted by the Supreme Court in the case of The United States vs. Union Pacific Railroad Company, 91 U. S. 72, it is not; but your petitioner submits that if and whatever so in default the remedies to which the United States are entitled and the duties of the executive departments of the Government in respect thereof are as follows:

(48). That is to say, all or the greater part of the road-beds and large tracts of land and all or most of the rights, privileges and franchises of said Union Pacific Railway Company were, by succession, derived from grants made by the United States in said Act of July 1st, 1862, wherein, in the sixth section thereof, it is expressly declared and limited:

"Section 6. And be it further enacted that the grants aforesaid are made upon condition that the said Company shall pay said bonds at maturity."

(49). That further, by the preceding section of the same Act, it was provided:

" * * * and on the refusal or failure of said company to redeem said bonds, or any part of them, when required so to do by the Secretary of the Treasury, in accordance with the provisions of this act, the said road, with all the rights, functions, immunities, and appurtenances thereunto belonging, and also all lands granted to the said company by the United States, which, at the time of said default, shall remain in the ownership of the said company, may be taken possession of by the Secretary of the Treasury, for the use and benefit of the United States."

(50). That after said Act and by the Thurman Act so-called (Act of May 7, 1878, Section 11), it was further expressly enacted as follows:

"Sec. 11. That if either of said railroad companies shall fail to perform all and singular the requirements of this act and of the acts hereinbefore mentioned, and of any other act relating to said company, to be by it performed, for the period of six months next after such performance may be due, such failure shall operate as a forfeiture of all the rights, privileges, grants, and franchises derived or obtained by it from the United States; and it shall be the duty of the Attorney-General to cause such forfeiture to be judicially enforced."

(51). Your petitioner begs leave to quote from the argument of the Railroad Company itself as reported in the case of

The United States v. Union Pacific R. R. Co.,
91 U. S., 72.

"We come next to the question of looking to those provisions as to the mode of repayment. At what time, if at all, if the Government may proceed by assumpsit for either bonds or interest, does the Act contemplate that there may be a default in the payment? And we answer that such a default will occur at the maturity of each bond if from the sources thus provided and a statement of the account and the application of the sums earliest due from the Government in the payment of the sums earliest due to the Government, be they principal or interest, any such interest shall be found to be due.

"This results from the fact that there is no provision in this clause for a statement of account by the Secretary of the Treasury every six months."

And again—

"Throughout the charter, the provisions to protect the Government, we submit, are in clear terms either indisputable common law, strict conditions, or a mortgage which is shaped as a strict condition allowing no equity of redemption, but providing a mere summary forfeiture."

(52). The Court practically adopted this construction in that case, and, dwelling upon the fact that a forfeiture would follow any default under the sixth section of the Act of July 1st, 1862, held that there would be default in the repayment of the interest on the subsidy bonds only when the principal matured at which time "there was left for the Government the entire property of the corporation, of which immediate possession could be taken on a declaration of forfeiture. * * * Congress * * * rested satisfied with the entire property of the Company as security for the ultimate payment of the principal and interest of the bonds."

(54). But if any bonds are due and any demand were necessary, your petitioner shows that the Secretary of the Treasury appears to have made it, as alleged by the Attorney-General in his bill, and that at least such bill is itself a demand, and, if maintainable, the prayer thereof for foreclosure sale is idle and futile, since at the farthest in six months from the filing of the same the proceedings thereof must, by explicit command of Congress, be followed or superseded by proceeding to have a forfeiture to the United States judicially enforced.

(55). Your petitioner calls attention to the suggestion filed by the Attorney-General in the third of the above entitled causes as to the extraordinary complications of titles and interests involved in the properties of said Union Pacific Railway Company, and the great length of time and probable litigation necessary to determine the same, and also to the same difficulties as shown in the bills of foreclosure and the answers in both the above entitled causes. And your petitioner submits that more than six months will be required for the ascertainment of what properties and interests may be sold in foreclosure proceedings in either the first or second of

the above causes, and that if the forfeiture to the United States under the Thurman Act is not already complete no sale could be had under any pending foreclosure proceedings until long after it becomes so, when no sale of the absolute property of the United States, without act of Congress can be had at all, and at which time no steps to foreclose, as mentioned in the Act of March 3rd, 1887, on any such property, will be necessary to protect the interest of the United States therein.

(56). Your petitioner admits that there may be doubt as to whether the foregoing forfeiture provision of the Thurman Act does not impair the obligations of the contract, but submits that it is supported by the fifth and sixth sections of the Act of July 1st, 1862, as heretofore construed by the Supreme Court. And further submits that if it does so impair the contract, a foreclosure sale would do so equally or in a greater degree. While if it does not impair the contract and is operative, it cannot now be followed by any immediate foreclosure sale without the substantial destruction of the interest of the United States in the property or proceeds; for the forfeiture includes the franchises, among which is the franchise to be a corporation; so that, after any forfeiture, there can be neither service upon nor judgment against said company in behalf of first mortgage bondholders or the United States, and all suits should abate, as there are no statutes to preserve the existence of the Company, even for winding up purposes. And it is submitted that if a sale were had under such circumstances, good faith on the part of the Government would require the Government to pay the first mortgage bonds out of the proceeds, including the sinking fund, hereinafter mentioned, and to limit any application thereof in its own behalf to such of the subsidy bonds as matured before the debtor was discharged from further obligation by ceasing to exist.

(57). The only remaining remedies of the United States against the properties of the Company are set forth in the fourth section of the Act of March 3, 1887, as follows:

"Sec. 4. That whenever, in the opinion of the President, it shall be deemed necessary to the protection of the interests and the preservation of the security of the United States in respect of its lien, mortgage or other interests in any of the property of any or all of the several companies upon which a lien, mortgage, or other incumbrance, paramount to the right, title or interest of the United States for the same property, or any part of the same, may exist and be then lawfully liable to be enforced, the Secretary of the Treasury shall, under the direction of the President, redeem or otherwise clear off such paramount lien, mortgage or other incumbrance by paying the sums lawfully due in respect thereof out of the Treasury; and the United States shall thereupon become and be subrogated to all rights and securities theretofore pertaining to the debt, mortgage, lien or other incumbrance in respect of which such payment shall have been made. It shall be the duty of the Attorney-General, under the direction of the President, to take all such steps and proceedings, in the courts and otherwise, as shall be needful to redeem such lien, mortgage or other incumbrance, and to protect and defend the rights and interests of the United States in respect of the matters in this section mentioned, and to take steps to foreclose any mortgages or lien of the United States on any such railroad property."

(58). Your petitioner calls attention to facts as follows:

That the general scope of said section and of the section which follows it looks to the acquisition of other liens by the Government, and not to the sale of its own.

It authorizes foreclosure but not foreclosure sale.

That the remedy of the fifth section of the Act of 1862 was defective in that it did not expressly authorize the Secretary of the Treasury to take possession of the telegraph line as well as the railroad line for default.

That the sixth section of the same Act of 1862 could only work a reverter of the property and franchises granted to the Company by the United States, and that the forfeiture in the eleventh section of the Thurman Act was strictly limited to things derived from the United States, notwithstanding the ninth section of the same Act purported to give to the United States a lien upon all the property of the Company without regard to where it came from.

Also to the fact that said Union and Kansas Pacific Railroads had in the meantime constructed and acquired railroad extensions not bond-aided and which were not derived from the United States and upon which Congress had expressly allowed mortgages to be placed by other than the bond-aided companies.

In the light of the foregoing circumstances, the necessity for and limit to the scope of the Act of March 3rd, 1887, fully appear and are in harmony with then existing legislation, especially the Thurman Act, which it did not even purport to alter or amend.

(59). Your petitioner shows that if the Thurman Act is lawful and operative, there cannot be any further steps which, in a legal sense, are necessary to protect and defend any interest of the Government in property already forfeited absolutely to it.

(60. And your petitioner submits that the only liens which the Attorney-General is to foreclose under said Act of March 3rd, 1887, are such as the Government may have acquired and to which it became subrogated as therein contemplated, and such as were imposed in behalf of the United States under the ninth section of the Thurman Act, and which liens rest upon property technically not derived by said Union Pacific Railroad Company directly from the United States, and, therefore, not included in the reverter contemplated in the sixth section of the Act of 1862, or in the eleventh section aforesaid of the Thurman Act.

Your petitioner instances that the only way to extinguish the Union Pacific Railroad Company's interest in the Omaha bridge, and the Kansas Pacific Railway Company's interest in the road from the three hundred and ninety-fourth mile post through to Cheyenne, so that the Government would acquire the same and preserve the continuity and entirety of the road, is either in an

acquisition and a foreclosure of the mortgages which the Government allowed the companies to place upon said properties, or by a foreclosure of the lien in behalf of the United States declared in the Thurman Act as aforesaid; because neither of these properties nor the equity of redemption in them was derived from the United States and would not revert to it for breach of the condition of the sixth section of the Act of 1862 or by forfeiture under the eleventh section of the Thurman Act.

(61). Your petitioner shows that, except as aforesaid, no foreclosure proceedings in behalf of the United States are, in a legal sense, necessary or pertinent to protect and defend the interests of the United States as against the Company; and none whatever to protect the interests of the United States in anything derived by the Company from the United States, and submits that the protection designed to be afforded in said Act is against liability to loss in foreclosure of liens underlying the lien of the Government. These will be presently considered as the principal private obligation of the Union Pacific Railway Company.

SIXTH: OF THE OBLIGATIONS OF SAID BOND-AIDED PACIFIC RAILROAD COMPANIES DUE TO THE GOVERNMENT AS SUCH, AND IN WHICH THE PEOPLE OR ANY OF THEM AS SUCH HAVE NO INTEREST.

(62). This consists simply of the obligation to redeem the subsidy bonds as they mature. It is submitted that the redemption of the bonds would not discharge the companies or the roads from their public and quasi-public servitudes and obligations aforesaid.

PART THIRD.

OF THE PRIVATE INDEBTEDNESS OF SAID PACIFIC RAILROADS, AND MORE ESPECIALLY PERTINENT TO THE RIGHT OF YOUR PETITIONER TO INTERVENE IN THE SECOND OF THE ABOVE-ENTITLED CAUSES.

(63). Your petitioner shows that all the alleged private indebtedness of said Railroad Companies may be classified as follows:

First: The secured indebtedness, consisting of—

(a) First mortgage bonds on the bond-aided roads issued under the Act of July 2, 1864;

(b) Omaha bridge bonds, issued under the Act of February 24, 1871;

(c) First mortgage bonds on the Kansas Pacific Railroad from the three hundred and ninety-fourth milepost west to Denver, and first mortgage bonds issued on the road from Denver to Cheyenne, both of which issues were authorized under the Act of March 3rd, 1869;

(d) Certain alleged land grant bonds purporting to be secured by mortgages of the lands granted to said companies by the United States and for any mortgage whereof your petitioner is unable to find any authority;

(e) Mortgages and pledges to secure bonds and notes in various trusts, made without any authority of Congress and since said Acts of 1873 and 1878, and which it is submitted were prohibited by said Acts and need not be considered except as several of them appear to have large margins of security, even if the incumbrances are valid;

(f) Guarantees of interest on bonds and dividends on stocks, rentals and the like of other railroad companies, all, as your petitioner is informed and believes, entered into since the Act of 1878 aforesaid, and not in

ordinary course of current business or in good faith and for value;

(g) A current floating indebtedness, not large, incurred in due and ordinary course of business.

Your petitioner shows that the first four classes aforesaid contain all the bonds which, by any possibility, can have any lien on the property of the Union Pacific Railroad Company in priority of the Government's lien.

(64). All the foregoing were issued prior to March 3rd, 1873, on which date an Act of Congress was passed forbidding the Union Pacific Railroad Company from issuing any new stock or making any mortgages or pledges on the property or future earnings of the Company without leave of Congress, except for funding and securing debt then existing or renewals thereof. This disability was not relieved by the consolidation of that Company with the Kansas Pacific Company, even if, after the Thurman Act, that consolidation were lawful.

(65). That the foregoing are also all the mortgages or pledges made prior to the date of said Thurman Act of May 7, 1878, which, in the ninth section thereof declared a lien upon all the property of said Union and Central Pacific Railroads of every description, for the payment of the indebtedness due or to become due to the United States and the payment of the sums required to be paid into the sinking fund, subject only to the provisions that the Act should not be construed as preventing a disposition of the assets in good faith for value in ordinary current business.

(66). Thereupon, in respect of all said private indebtedness, your petitioner submits that in any conflict of interest between the public and quasi-public duties of

the Pacific Railroad Companies and their private obligations, the preservation of the former is of paramount importance.

"The supreme object to be attained," say the Supreme Court (in United States v. Union Pacific Ry. Co., 160 U. S., 1) "was the maintenance and operation of both a railroad and telegraph line from the Missouri River to the Pacific Ocean and governmental aid was extended in order to accomplish a result so important to the whole country."

"We have seen," adds the Court, "that the object of giving governmental aid to the corporations named in the Act of 1862 was to promote the public interest and welfare by the construction and operation of a railroad and telegraph line to the use and benefit of which the Government should be entitled at all times, particularly in times of war, for postal, military, and other purposes."

Even earlier than this and when the United States sought to press its own financial claims and to compel the Company to reimburse the Government for the interest on the subsidy bonds, as the interest matured and was paid by the Government, the Supreme Court in case of The United States v. Union Pacific R. R. Co., 91 U. S., 72, elaborating that such a requirement might cripple the ability of the Company in the performance of its undertaking, said:

"Indeed the whole Act contains unmistakable evidence that if Congress was put to the necessity of accomplishing a great public enterprise through the instrumentality of private corporations, it took care that there should be no misunderstanding about the objects to be accomplished or the motives which influenced its action. If it had been equally explicit in the provisions regarding the bonds to be issued in aid of the road, there would have been no occasion for this suit."

The same Court, when afterwards it sustained the constitutionality of the Thurman Act creating the sinking fund, Union Pacific R. R. Co. v. United States, 99 U. S., 700, said:

"The fund to be created is not so much for the security of the creditors as the ultimate protection of the public and the corporators

* * * It simply gives further assurance of the continued solvency and prosperity of a corporation in which the public are so largely interested."

And, again, in U. S. v. Western Un. Tel. Co., 50 F. R., 42, the Court (Mr. Justice Brewer) say with regard to this point:

"The Government is, it is true, pecuniarily interested as a second mortgagee, but a higher interest is that the administration of its franchises should redound to the general welfare, and not merely to the pecuniary interest of its grantee, or even of itself. The dollar is not always the test of the real interest. It may properly be sacrificed if anything of higher value be thereby attained. But whether the dollar be gained or lost, is not in a matter of this kind a question for the courts. It is for legislative branch, as representative of the popular will, to settle all such questions."

Your petitioner begs leave to show that this is also the understanding of the disinterested Railroad Companies and of Congress and the people. Stuyvesant Fish, President of the Illinois Central Railroad Company, said before the House Committee in February last:

"My endeavor is to put myself as far as I can in the position of the Government. If I stood to-day where the Government stands I would take all the liens on all the bond-aided roads and consolidate them as one thing. That is the best asset the Government has. But the question goes higher. It does not seem to me a question of what the Government can get in money, whether it is $25,000,000 or $45,000,000 or nothing at all. The question is, how can we best carry out the intention of the act of 1862, the act for which those lands were granted and under which those bonds were issued, and in consequence of which railroads were built from the East to the Missouri River—half a dozen of them—and so restore, as best we can, the great broad principle which underlies that act for the benefit of the Government Treasury and the people of the United States in giving them better and cheaper transportation, and putting upon an equal footing all the railroads that reach the Missouri River from the East. You will then have such a volume of business concentrated on the Union Pacific that it will be able to carry freight at a much smaller cost than any other transcontinental line. It will stand somewhat in the position of the Erie Canal and the Great Lakes as a regulator of freights between Chicago and New York. * * * The question I should like to place before the committee, and I have no doubt you have it in your minds, is the importance of taking care of the commercial and shipping interests of that section of the country through which these roads run. There is an opportunity, through reorganization of these roads, perhaps, to stop the waste of capital in building unnecessary parallel lines."

The Senate Committee on Pacific Railroads has by its Chairman, Senator Gear, reported a bill providing for the adjustment of the relations of the road to the United States by a Commission, in which it is said:

"Even if no other considerations existed affecting the subject the Committee would consider an effort at amicable adjustment through and by means of such a commission abundantly justified by the consid-

eration that if a settlement should be made under such a bill there would be secured to all present and future connections of the roads involved the important privileges subject to which any settlement under this act is required to be made, viz., that the companies, if such settlement should be made under the act, and their successors, lessees and assigns should co-operate in making track connections with all railroads of other companies now or hereafter built to points of junction with their bond-aided roads—and that at any point where two or more should connect." Any preference or predjudice for against either should be unlawful. "These privileges could not be acquired as a result of the foreclosure of the paramount mortgage upon the property and the possibility of securing * * * such privileges for all time to come is certainly worth vastly more than an effort to reach" it could cost.

"In any settlement or agreement which might be made with the companies under the authority of Congress, these provisions should be inserted in order to make sure that the roads affected by the settlement were kept open as public highways in the future for the benefit of all present or future railway connections."

In the report of the author of the Commission bill introduced in the House of Representatives in February last with the support of the Committee, it is said:

"If this" (foreclosure) "should occur the most valuable and important part of this great line of railroad across the continent will have passed into other hands without the preservation to the Government of many valuable rights and privileges it now has and which will be retained by it by the passage of this bill."

It does not seem to have occurred to these committees while thus lamenting the loss and deprivation to be sustained in foreclosure either by or against the United States that the Government can be deprived of nothing without its consent and that no bills are necessary to prevent its spoilation of valuable rights and privileges by the Courts without the authority of Congress.

The report of the minority of the same Committee said:

"It should be first noticed that the Attorney-General does not purport to have been guided so much by his duties as the law officer of the Government as he does by his abilities as a trader. His first public announcement of what he had done rested his justification on the guaranteed bid he had secured and the deposit he had obtained. The legal procedure he has instituted as Attorney-General is all ancillary and subordinate to this. But the Attorney-General's authority can not depend upon the price—if he could sell out for $46,000,000, then, equally, he can do so for 46 cents; and his office does not empower him to sell at all.

"But the Attorney-General's procedure in pursuance of the agreement was more in excess of his authority than was the agreement itself-for he did not merely bring foreclosure proceedings in behalf of the Government's lien, but filed his appearance for the United States in the pending foreclosure suit in behalf of the first mortgage bonds, whose holders assert a lien in priority to the lien of the Government, and, as this minority is informed and believes, his bills were actually filed in

this prior foreclosure suit. He does not so much foreclose for the Government as he subjects the Government's interest to foreclosure. For his want of authority to do this, attention is called to a few decisions of the Supreme Court of the United States:

'Without an act of Congress no direct proceedings will lie at the suit of an individual against the United States or its property, and no officer of the Government can waive its privilege in this respect nor lawfully consent that such a suit may be prosecuted so as to bind the Government. (Headnote (in L. Ed.) by Mr. Justice Bradley, who gave the opinion in Carr *v.* United States, 98 U. S., 433.)

'Comptrollers of the Treasurery can not submit the rights of the Government to litigation in any court without some express provision of law. (Case *v.* Terrell, 11 Wall., 199.)

'Claims against and liens upon property of the United States are incapable of enforcement except when such property becomes subject to the control of the court. (The (ship) *Siren v.* United States, 7 Wall., 152.)

'Individuals, as well as courts, must take notice of the extent of authority conferred by law upon a person acting in an official capacity. (Hawkins *v.* United States, 96 U. S., 689; Whitsides *v.* United States, 93 U. S., 247.)

'When the property of the Government is concerned it is proper for the attorney for the United States to intervene by way of suggestion, and in such case if the suit be not stayed altogether the court will adjust its judgment according to the rights declared on the part of the Government thus intervening. (Stanley *v.* Schwalby, 147 U. S., 508, 513 and citations; see also 7 Cranch, 116-147, the leading case.)

'When a State or the Government is a necessary party defendant, the court will decline jurisdiction, and the proceedings will be dismissed. (Cunningham *v.* Railroad Company, 109 U. S., 446-451.)"'

It is submitted that the supreme object of the United States in behalf of the Government and the people, in creating this Company and endowing it with fabulous subsidy, cannot be defeated by any private obligations which the Company was allowed to contract, and that the holders of such obligations took them with that understanding. If not, it was sufficiently indicated in the Act of March 3rd, 1873, which declared—

"The laws of the United States providing for proceedings in bankruptcy shall not be held to apply to said corporation."

which were the only proceedings, if any, by which it could be attempted to separate the property from the franchise without making the United States a party.

OF THE FIRST MORTGAGE BONDS ISSUED UNDER AUTHORITY OF SECTION TEN OF THE ACT OF JULY 2, 1864.

(67). Presumably it will not be contended that these bonds could foreclose against and without the consent of the United States, but it may be asserted that the United States have consented, which your petitioner begs leave to consider later.

(68) Your petitioner submits that the first mortgage bonds are not foreclosable under present legislation and especially not against the United States or by foreclosure sale.

That it was not intended they should be, and provision was made which is still sufficient to render it unnecessary, and the Government itself is required to pay them, if necessary, to prevent such foreclosure. The Company is ready, able, and willing, and has offered to pay them if the Government will subordinate its claim to enable the Company to do so. That no mortgage deed was authorized under which foreclosure can be had, but a substitute remedy was afforded.

That especially no such foreclosure is authorized to bar or oust the interests of United States, and no law officer of the Government is authorized to subject those interests to such procedings, and if a foreclosure sale can be had it is not necessary to make the United States a party and bar them, for the property will demonstrably bring more than enough to pay the first mortgage bonds without doing so.

(69). In respect of the foregoing, your petitioner begs leave to point out more in detail as follows:

The Union Pacific was authorized to issue stock for cash at par for the full cost of its road up to one hundred millions, which was more than it cost. That Company and the Kansas Pacific were loaned thirty-three millions of six per cent. Government bonds for thirty years, without paying current interest, and were given outright a

land grant thought to be worth as much as the bonds, and then they were allowed to issue their first mortgage bonds which in some instances, especially in the case of the Sioux City and Pacific Company, were, all of them, distributed as a dividend to the stockholders for nothing.

(70). Your petitioner shows that the resources aforesaid are still ample. There are about sixty-one millions outstanding stock of the consolidated Union Pacific Railway Company, whose constituents received for stock issued not one hundred per cent. of the par thereof in money, as required by the Acts aforesaid, but, as your petitioner is informed and believes, only sixteen per cent. thereof.

That when the Government was advised that the stock had not been paid for, Congress passed the Act of March 3rd, 1873, by which the Attorney-General was directed to bring suit against certain of the stockholders therein described to recover the unpaid stock subscriptions for the benefit of the Company, which he did, and apparently failed to maintain it, only because the proceedings were premature, as the Company at that time was not in default to the United States, and objected to the suit. The United States v. The Union Pacific Railroad Company, 98 U. S., 569.

Such suit is now maintainable, and, in addition to that, the Company is insolvent, and in the hands of receivers, who may be directed by this Court to bring like suits in behalf of creditors, whether the Company consents or not. The unpaid eighty-four per centum on said capital stock of $61,000,000 should yield if collectible nearly twice the amount of said first mortgage bonds.

(71). Your petitioner shows that, for the purpose of protecting and doing complete justice to the first mortgage bondholders of said Union Pacific Railway Company, said Act of July 2nd, 1864, gave to such bonds a

first lien upon the roads, property, and equipment of the companies respectively issuing said bonds, to which the lien of the United States should be subordinated.

(72). That the prior Act of July 1st, 1862, did not contemplate any first mortgage bonds, and under Sectio 6 thereof all compensation for services rendered for the Government was to be applied to the payment of subsidy bonds; but when said first mortgage bonds were authorized, said prior Act was modified by Section 5 of said Act of July 2nd, 1864, so that only one-half of said Goverernment compensation was to be retained by the Government and so applied, whereby relief was afforded to said companies to enable them to meet the interest to accrue on said first mortgage bonds.

(73). That by Section 2 of the Act of 1878 (the Thurman Act), the right of the Government to retain the whole of said compensation was restored, and said companies were required to supplement the same with the payment of certain other sums until the whole should equal twenty-five per centum of the net earnings of said companies respectively; but again, for the relief of said companies, in view of their obligations on first mortgage bonds, it was provided, in Section 2nd of said Thurman Act, that net earnings should not include interest paid on first mortgage bonds, but should be ascertained after deducting such interest.

(74). And further, for the protection of such first mortgage bondholders, Section 5 of said Thurman Act made it the duty of the Secretary of the Treasury to remit so much of all compensation to be retained by the Government, or other moneys to be paid to the Government, by said companies as should be necessary to enable said companies, according to the terms of said Act, to pay interest on its said first mortgage bonds.

It was held by a divided Court in Union Pacific Railroad Co. v. United States, 99 U. S., 402, that the five per cent. of net earnings reserved under the Act of July 1st, 1862, was, by the Act of July 2nd, 1864, subordinated to the payment of interest on the first mortgage bonds.

(75). And finally, in Section 3 of the Thurman Act, a sinking fund was created to be made up in whole or in part of the additional half of compensation for Government services, which said Act allowed the Government to retain, on which fund thus to be accumulated the first mortgage bondholders were, by Section 8 of said Act, given a first lien for the payment of the principal thereof, according to their rights in the premises.

(76). In addition to the foregoing, your petitioner shows that the present value of so much of the sinking fund aforesaid as pertains to the Union Pacific Railway Company, and on which the first mortgage bonds have a first lien, is over seventeen million dollars, which is considerably more than the whole amount of said first mortgage bonds of said company that have as yet matured and, if applied to the payment of such bonds and others as they mature, would cancel all default in respect thereof and leave only about an equal amount outstanding, which said fund, if continued, should also speedily extinguish under the consequent constantly reducing interest charge thereon.

(77). And your petitioner says that a reorganization committee, representing the stockholders of said company, offered in their behalf to committees of the last Congress, as hereinafter mentioned, to pay off the balance of said first mortgage bonds, if the sinking fund could be applied thereto, and if the United States would extend its own claims and reduce the interest thereon,

which your petitioner submits the United States, under its subordinated lien, should do if the United States do not themselves pay off said first mortgage bonds.

(78). By the Act known as the Act of March 3, 1887, the Secretary of the Treasury was authorized to invest the sinking fund in purchases of these same first mortgage bonds, which constituted a lien upon it. The Act further contemplated that if such bonds were outstanding, they might endanger the security of the United States, and that the President should direct the Secretary of the Treasury to purchase and the Attorney-General to take all steps and proceedings needful to redeem the same, which, as hereinbefore shown, included more than first mortgage bonds on bond-subsidized portions of the road, and covered road over which the Government had no lien, except under the Thurman Act, and on which first mortgage bonds, therefore, could foreclose. From all of which it is submitted an intention appears on the part of the United States to protect the lien at least of said first mortgage bonds.

(79). No mortgage deed to secure said bonds was authorized. Your petitioner shows that the Government's lien was created by the Act of July 1st, 1862, and was merely subordinated to the lien of the first mortgage bonds authorized to be issued under the Act of July 2nd, 1864, which Act, as against the United States, is to be strictly construed and did not authorize the making of any mortgages as security for said first mortgage bonds, but made said bonds themselves in the issuance thereof ipso facto liens upon the property, just like the lien of the Government for the subsidy bonds, which was subordinated thereto.

(80). The Act of 1862 in respect of the lien of the Government bonds is as follows:

"The issue of said bonds and delivery to the company shall ipso facto constitute a first mortgage on the whole line of the railroad and telegraph, together with the rolling stock, fixtures and property of every kind and description, and in consideration of which said bonds may be issued."

And the amendment of 1864, authorizing the first mortgage bonds, is as follows:

"Sec. 10. AND BE IT FURTHER ENACTED, That section five of said act be so modified and amended that the Union Pacific Railroad Company, the Central Pacific Railroad Company and any other company authorized to participate in the construction of said road, may, on the completion of each section of said road, as provided in this act and the act to which this act is an amendment, issue their first mortgage bonds on their respective railroad and telegraph lines to an amount not exceeding the amount of the bonds of the United States, and of even tenor and date, time of maturity, rate and character of interest with the bonds authorized to be issued to said railroad companies respectively. And the lien of the United States bonds shall be subordinate to that of the bonds of any or either of said companies hereby authorized to be issued on their respective roads, property and equipments."

(81). It is submitted that the word "tenor," when used of the two series of bonds, means that they are to be of contemporaneous issue and to have the same kind of a hold or tenor on the property, and that there was no more right to make a mortgage to secure the first bonds than to require one to secure the seconds.

The Supreme Court in Union Pacific R. R. Co. v. United States, 99 U. S., 402, say:

"It may perhaps be urged that the first mortgage bondholders have no lien on the net earnings, but they have the same lien that the Government has. Both liens are co-extensive with the whole property of the company, so far at least as relates to the railroad and telegraph lines and their equipment, and all property appurtenant thereto."

That the word "mortgage" does not imply that any such instrument is to be made; for it is used of both liens in the acts quoted above and in the Act of March 3rd, 1887, and constantly by the Supreme Court in the decisions herein cited.

(82). That it could not have intended that the company was to make a real estate mortgage of the railroad,

appears for several reasons. The Company had no evidence of title in the form of any conveyance to itself. No patents were to issue to the company for the strip of land constituting the location, but only for the lands on each side of it (Act July 1st, 1862, Sect. 4). The right of way was granted as an easement by the Act of 1862.

When the bonds began to issue it was impossible to know for several years where the complete location should be or how much road, and where to end, each company could build. Nothing could be described so as to be identified in a mortgage, at least there was no authority to describe anything in a mortgage. Besides, it was expected that the bonds would be issued in small lots extending over a period of thirteen years, with consequent different dates of maturity, and as was contended in United States v. Union Pacific R. R. Co., 91 U. S., 72, failure to pay each bond constitutes a separate and independent default. Especially was no mortgage authorized which should contain a power of sale, or which, by strict foreclosure, should bar the right of the United States to redeem, or which by any possibility could defeat the purpose of the Government in aiding said road. The companies were allowed to issue the bonds one hundred miles in advance of construction, and the Act contemplated (Sec. 17, Act 1862) that on a failure of the companies to complete the road, the United States should take possession and complete it, which purpose was a part of the security of said bonds and was inconsistent with the foreclosure of any mortgage in their behalf that could prevent such completion, and such mortgage and foreclosure are equally inconsistent with the present right of the United States to take possession of the roads and devote their whole income to putting any part of either of them in repair.

(83). That though the existence of alleged mortgages to secure the first mortgage bonds was noticed in

the preamble of the Thurman Act, yet in the same paragraphs the lien of the bonds was mentioned as limited to the provisions of the acts aforesaid.

(84). That such mortgages, especially if containing any power of sale would be wholly inconsistent with the reverters and forfeitures and other remedies reserved and secured to the United States, and, with the public and private duties imposed upon said company and as conveyances, conditional or otherwise, were ultra vires.

That if any such mortages have been made which do not vary the statutory lien of said bonds, they were wholly unnecessary and not intended; and if they do not vary it, they are wholly unauthorized.

(85). The Act of July 2nd, 1864, gave to said first mortgage bonds no lien on any of the rights, privileges, and franchises of said Union Pacific Railway Company or its predecessors, but only upon the roads, property, and equipment of said companies, which properties are only appurtenant to the franchises. The servitudes imposed upon said properties in behalf of the United States and the public were not subordinated to the lien of said mortgage bonds.

(86). That such mortgages, in the absence of any statutory or contract provisions for the foreclosure, and on a road running through States and Territories which were to become States, all with different railroad and mortgage laws, was more like what is known in England as a mortgage of the "undertaking," and that the security therefor to be of the same tenor as that of the United States requires that, in the event of default in the payment of any of said bonds, the holders thereof should, as a contract right, be entitled to have some trustee or trustees appointed for them by the Court, with the same powers that were conferred upon the Secretary of the

Treasury when there should be default in the payment of the subsidy bonds as set forth in Section 5 of said Act of 1862; that is to say, with power to take possession not only of everything covered by their lien, to-wit, "the respective roads, property, and equipment" of said companies (Sec. 10, Act of 1864), but also "with all the rights, functions, immunities, and appurtenances thereunto belonging." (Sec. 5, Act 1862). Not otherwise, it is submitted, can the mortgaged property be operated for the benefit of said first mortgage bondholders and the lien of the United States completely subordinated to the prior lien of the same tenor. And such trustee, so to be appointed, should be required to operate said road just as the present receivers are now doing, and to devote the whole income to the payment of the interest as it accrues and to the principal as it matures on each of said first mortgage bonds not paid by the sinking fund. And the right of the United States to forfeiture, foreclosure, or reverter, or to retain compensation for services, or any part of the earnings, should be subordinated thereto. Such remedy as this,—the right to its full earning capacity, is all that any creditor or owner can get out of any quasi-public corporation which the public has a right to have operated, and especially is it all that the safety and declared purposes of the Government can permit to any mortgagee or creditor of this road.

(87). But your petitioner submits that, even if the lien of said first mortgage bonds may be enforced against the companies by strict foreclosure, such proceedings could not bar the United States. Presumably every taker of the bonds was aware of the law as a fact that the United States cannot be sued, nor can their properties be attacked by judicial proceedings without their express consent by act of Congress; and, as herein elsewhere shown, no law officer of the Government can sub-

ject its property to such proceedings without like authority. If the first mortgage bondholders have a right, they have no remedy, and the court cannot give to them a remedy against the Government.

(88). Your petitioner further shows that it would not be necessary to make the United States a party and bar it in order to have the sale yield more than sufficient to pay the first mortgage bonds, for that nearly all of said bonds are held or controlled by a Reorganization Committee, hereinafter mentioned, which has also assembled substantially all the stock of said company, and, as your petitioner is informed and believes, has instituted or caused to be instituted or has adopted foreclosure proceedings pending in this Court in behalf of the lien securing said bonds, and has agreed with the Attorney-General to bid about forty-six millions for the lien of the United States on said Union Pacific Railway and sinking fund in any foreclosure sale in said proceedings, so that a great value in said property above the lien of the first mortgage bonds demonstrably exists and from which it is necessarily inferred that, in any foreclosure sale in behalf of the first mortgage bonds, an amount far in excess of the sum required to pay any balance of first mortgage bonds would be realized without making the United States a party or cutting off its interest. The purchase price would be almost inevitably the amount of said first mortgage bonds and would be paid in a surrender and cancellation thereof; it would not be much if anything more, since the surplus would go to the United States, whose right to redeem would not be cut off and it would not be much, if anything, less, for fear that the Government might redeem from the purchaser without paying the balance of the bonds. This would release the sinking fund to the United States.

(89). The rights of the United States as such would then be only the powers, coupled with an interest, hereinbefore set forth, and the right to redeem. The purchaser would be secure; he could only be disturbed by the repayment of his money with six per cent. interest, and, in the meantime, would enjoy the whole use and income of the property, subject only to the powers coupled with interests aforesaid and the rights of the public therein as they have heretofore existed, and as it was designed they should be perpetuated.

(90). So well understood does this appear to be that the defaulted first mortgage bonds continue to be worth about par on the market, in so far as there are any for sale, and the Reorganization Committee aforesaid is glad to secure a continued payment of the interest upon such as are submitted to their control; and in their scheme of reorganization they propose that such bonds shall carry a large premium in new securities, while the stock of said company, though subject to an assessment, has a substantial market value because of the expectation that an interest, representative thereof, in the form of new stocks, will survive all anticipated foreclosures whatsoever.

(91). Wherefore, in all and singular the foregoing, your petitioner submits that no foreclosure sale in behalf of said first mortgage bonds is lawful or necessary; and that especially is there no authority in law and no necessity for making the United States a party to proceedings therefor.

Your petitioner asks but little consideration of the remaining private obligations of the Company as above classified. The petitioner finds no authority for the

making of the land grant mortgages, and they seem to be inconsistent with the reverter secured to the United States and to the rights which the public were to have to enter upon all said lands which should not be disposed of within three years, at substantially Government rates or prices. The objection to the making of any such mortgage before the location of the road was determined and the length of it, and what lands therefore should appertain to the respective companies, forbade any mortgage until the roads should be completed, and it was not contemplated that this would be accomplished in less than thirteen years, while at the end of three years the lands were to be open to entry as aforesaid, and were subject to forfeiture and reverter if the road should not be completed by the Company.

(92). It is submitted that the idea of a mortgage on the land is almost as inconsistent with the dominant idea of the whole enterprise as any specific mortgage on the railroad to secure the first mortgage bonds would be. But in this connection, your petitioner begs leave to call attention to an important fact, that the consolidated mortgage covering the Kansas Pacific road from the 394th mile-post west by way of Denver to Cheyenne appears to be also secured by substantially all the outstanding bonds on the Denver Extension and the Cheyenne Division and by substantially all of the Income Bonds on the Eastern and Middle Division of the Kansas Pacific. The Income Bonds, though unauthorized by any express legislation, were yet prior in date to the prohibitory act against further issues of bonds of March 3rd, 1873, and the Consolidated Mortgage, though subsequent to that Act, was made by the Kansas Pacific Company which was not included in said prohibitory act.

In 1878 the Thurman Act was passed, which practically forbade the Company from incurring liability, except for value, in good faith, and the ordinary course of current business; and the consolidation of the Union and Kansas Pacific, if lawful at all, did not take place till 1880, and presumably the Union Pacific did not assume any obligations of the Kansas Pacific by such consolidation.

(93). But in the worst aspect, and assuming that the Kansas Pacific could mortgage its lands under the consolidated mortgage, the estimated value of that land is nearly sufficient to pay the outstanding bonds, of about eleven millions, thereby secured, and thereby to release for cancellation the first mortgage on the Denver Extension and Cheyenne Division, and all the Income Bonds too for cancellation, thus preserving the entirety and continuity of the road as contemplated without imposing any further burdensome charge upon the Government in assuming said bonds.

(94). The authorized Omaha bridge bonds outstanding are not considerable. Besides, several of the collateral trusts of the company, to which, even if lawful, the lien of the Thurman Act should attach, afford margins of value for discharging the indebtedness secured.

(95). The remaining floating indebtedness to be noticed is divisible into two classes: One represents guarantees of dividends on stocks and interest on bonds of other railroads to an amount which it is said is the sole cause of the bankruptcy and insolvency of the Union Pacific Company, and, it is claimed, necessitates a foreclosure and a wiping out of the present Company to avoid these liabilities. The answer to which, your petitioner

submits, is that all such undertakings are in direct violation of the restrictions imposed by the Thurman Act, and are presumably utterly void. Such obligations, therefore, of the Union Pacific Railway Company offer no reason nor necessity for any foreclosure or other extinction of that Company.

(96). The remaining floating debt, unsecured, incurred in lawful course of current business, is not large. It has no legal protection, since it will be wiped out without recompense in any forfeiture or foreclosure. Its payment, therefore, may be postponed, but it is entitled to consideration more than are the stockholders in reorganization schemes to be had in pursuance of foreclosure.

PART FOUR.

OF THE RIGHTS OF THE UNION PACIFIC RAILWAY COMPANY ESPECIALLY PERTINENT TO YOUR PETITIONER'S RIGHT TO INTERVENE IN THE THIRD OF THE ABOVE ENTITLED SUITS.

(97). Your petitioner shows that said Union Pacific Railway Company, its constituents and predecessors, were endowed with certain peculiar and inalienable privileges and immunities to enable it to perform its obligations to the United States and to the public, as hereinbefore set forth.

(98). Your petitioner submits that said Company, having accepted the acts of Congress aforesaid, undertook to perform the duties thereby imposed upon it, and that it should protect and defend its ability to do so and that under said act known as that of March 3rd, 1873, as construed by the Supreme Court of the United States in the case of Union Pacific Railroad Company v. Hall,

91 U. S., 343, your petitioner is entitled to the writ of mandamus from this Court to compel said Union Pacific Railroad Company to operate its said railroad as required by law, which your petitioner submits requires said Company to defend according to its rights against foreclosure in the above entitled suits, to the end that your petitioner's rights and interests therein as hereinbefore set forth may be preserved.

(99). But your petitioner further says that nearly all of the stock of said corporation has been assembled by the Reorganization Committee aforesaid, which Committee has also assembled nearly all the first mortgage bonds for the purpose, among others and as hereinafter charged, of instituting or causing to be instituted foreclosure proceedings in behalf of said first mortgage bonds, and in which all junior liens and interests shall be wiped out and all the floating debts and contracts, all the duties to the United States and to the public, and all the rights and immunities of said company; and that in pursuance thereof there shall be a reorganization in which all the properties of said Union Pacific Railway Company shall be vested in a new corporation, freed from all obligations hereinbefore set forth, pertaining to said Union Pacific Railway Company, and in which new corporation the owners of the stock of the present company so assembled by said Committee shall have new stock.

(100). That said Committee have thus and otherwise, as your petitioner is informed and believes, acquired control of said Union Pacific Railway Company, its officers and directorate, whereby said company is made to cooperate in the purposes of said Reorganization Committee, and to that end abandon all defence of its rights, privileges, franchises, and immunities in the premises.

(101). Wherefore, as well as because of your petitioner's rights to the writ of mandamus, your petitioner

as standing herein to make defence for said company or to compel said company to make defence for itself of its rights, powers, properties, and immunities so that it may perform its duties aforesaid and that the interests of your petitioner may be protected.

(102). Your petitioner submits that the faith of the United States is pledged to the Union Pacific Railway Company and to the public neither themselves to foreclose by sale, nor to permit any foreclosure and extinction of that Company by or in behalf of first mortgage bonds.

(103). Your petitioner submits that under a comprehensive construction of the Acts of Congress hereinbefore referred to, the United States occupy a twofold relation to said Pacific Railroad Companies which were created and aided as aforesaid; one in which, as sovereign, the Government holds in trust the obligations of said Companies to perform and to maintain their ability to perform their duties to the public as well as to the United States, and the other relation in which the United States are simply a contract creditor.

(104). The constitutionality of the Thurman Act, which took vast sums of money from this Company for sinking fund purposes, was put upon the following grounds in the opinion of the Supreme Court in Union Pacific R. R. Co. v. U. S., 99 U. S., 700:

"The United States occupy towards this Corporation a twofold relation: that of sovereign and that of creditor. U. S. v. R. R. Co. (ante-143.

"Out of regard to the rights of the subsequent lienholders and stockholders, it is not only their right, but their duty, as sovereign to see to it that the current stockholders do not, in the administration of the affairs of the Corporation, appropriate to their own use that which in equity belongs to others.

"The fund to be created is not so much for the security of the creditors as the ultimate protection of the public and the corporators.

"To our minds it is a matter of no consequence that the Secretary of the Treasury is made the sinking fund agent and the Treasury of the

United States the depository, or that the investment is to be made in the public funds of the United States.

"Neither is it a fatal objection that the half of the earnings for services rendered the Government, which by the Act of 1864 was to be paid to the Companies, is put into this fund. The Government is not released from the payment. While the money is retained, it is only that it may be put into the fund, which, although kept in the Treasury, is owned by the Company.

"It simply gives further assurance of the continued solvency and prosperity of a corporation in which the public are so largely interested, and adds another guaranty to the permanent and lasting value of its vast amount of securities."

(105). That Act took the moneys which belonged to the Railroad Company and withheld the moneys due from the United States to the Railroad Company, and invested them at high premiums in securities of the United States, bearing a low rate of interest, which were continually shrinking as they approached maturity; and thus in the end the Act bankrupts the Union Pacific in the payment of its first mortgage bonds; for the fund is more than sufficient to pay every first mortgage bond that has matured; and that if the Government had credited the Company with the same interest on the fund which the Government was charging the Company on its own bonds, and the same rate the Company was paying on its first mortgage bonds, the fund should be about sufficient to pay all of the latter bonds as they mature. It is submitted that the United States cannot refuse to pay the bonds while that money lasts, nor can its officers conspire with the first mortgage bondholders in a foreclosure for the non-payment.

(106). In addition to that, the Thurman Act created out of whole cloth a lien upon all of the property of the Union Pacific Railroad of every description and from whatever source derived, and then declared the road a bankrupt and published the law that nobody should trust it except in due course of current business.

(107). Before that, by the Act of March 3rd, 1873, the United States forbade the Company from issuing any more stock, though it was not nearly up to its authorized limit and never has been; and also forbade it from issuing any new securities whatever, except in renewal of existing obligations. Under these conditions, bankruptcy would seem to be inevitable however much money the Company might earn or however much its property enhance in value.

It has been a common thing for the United States from time to time to direct the withholding of other moneys due from the Departments to the railroad companies, and of imposing onerous duties upon the companies without compensation, and directing the companies to sue if they objected. (See Act March 3, 1875. Act of April 30, 1878.)

(108). Your petitioner submits that it is manifest that the Government desired to avoid the construction or operation of the roads as a governmental foreclosure, but did desire to have them constructed and operated for use of the Government, especially in time of war, and to promote the public welfare at all times by agencies over which the Government should retain complete control.

(109). In addition to the foregoing acts of sovereign protection, your petitioner begs leave to cite that the Government has appointed meetings of the stockholders of the Union Pacific and ordered them to elect directors (Act of April 10, 1869.) It has appointed boards of eminent citizens to examine the condition of the road and compelled the companies to pay ten dollars a day to each member. It has authorized the Attorney-General to demand and receive security from the Union Pacific Company for the building of its road, and for the same purpose has required the President to withhold the sub-

sidy bonds to which the companies were entitled (same Act.) It has authorized the Secretary of the Treasury to examine the book records and correspondence, and all other documents of the Union Pacific Company, at will. (Act of March 3, 1873.) It has expressly legislated the Company and its creditors outside of the pale and remedies of the bankrupt law and forbade the Company to pay dividends (same Act). It has created new offices like that of Auditor of Railroad Accounts (Act June 19, 1878), afterwards called Commissioner of Railroads, to exercise a supervision over said Railroad Company, and to require from it further reports and statements of its conditions and operations. It has directed investigations to see if the Company has committed penal offences or become subject to punishment and forfeiture (Act of April 12th, 1869.) It has released it from building telegraph lines as a matter of contract, and has imposed such building without consideration under its reserved sovereign powers in behalf of the Government and the people (United States v. Union Pacific R. R. Co., 160 U. S. 1). It has enacted special criminal legislation applicable only to the directors, officers, and agents of these companies to prevent the use by the companies of their own funds, and to compel them to perform the special duties, secured to the public, and has imposed punitive damages upon the Company for violation (Thurman Act, Sec. 6, Act of June 20, 1874). And it has given to every citizen of the Republic, whether he has any interest or not (Union Pacific R. R. Co. v Hall, 91 U S, 343), a right to a writ of mandamus in any Federal Court having jurisdiction to compel the Company to operate its road as required by law (Act March 3d, 1873), and from the beginning it reserved to itself the power of life and death over the Company to secure the road to itself in time of war and to promote the public welfare.

(110). Your petitioner begs leave to incorporate, as statement herein, and to show that there cannot be a sale of said railroads to companies or to men who are under no special obligation to the Government or the people, the decision of the Supreme Court in the recent case of—

United States v. Union Pacific Ry. Co., 160 U. S., 1.

"In our judgment, it is not difficult to ascertain the intention of Congress in passing the acts of July 1, 1862, and the amendatory act of July 2, 1864, Chap. 216. The supreme object to be attained was the maintenance and operation of both a railroad and telegraph line from the Missouri River to the Pacific Ocean, and governmental aid was extended in order to accomplish a result so important to the whole country."

(After epitomizing the first 18 sections) "These and other provisions are wholly inconsistent with the idea that the Union Pacific Railroad Company could have fulfilled its obligations to the government by simply constructing a railroad, without making any provision whatever for the construction, maintenance or operation of a telegraph line, thereby leaving all communication by telegraph along its route to the absolute control of private corporations deriving no corporate authority from the national government, and whose operations would not ordinarily be subjected to national supervision."

"We have seen that the object of giving governmental aid to the corporations named in the act of 1862 was to promote the public interest and welfare by the construction and operation of a railroad and telegraph line, to the use and benefit of which the government should be entitled at all times, particularly in the time of war, for postal, military and other purposes.

"In this view it must be held that by its reservation of authority to add to, alter, amend or repeal the act in question, whenever it choose so to do, Congress, subject to the limitation that rights actually vested or transactions fully consummated could not be disturbed, intended to keep within its control the entire subject of railroad and telegraphic communication between the Missouri river and the Pacific ocean, through the agency of corporations created by it, or that had accepted the bounty of the Government. It was never intended that the railroad companies accepting such bounties should be able, by any contract or arrangement with telegraph companies, to discharge themselves, for all time and beyond the authority of Congress otherwise to provide, from the obligation to exercise, by their officers and agents exclusively, the telegraphic franchises received by them from the national government

"It was suggested in argument that the objects of the acts of 1862 could be fully accomplished by means of a telegraph company incorporated by one of the States, and which, by placing its lines on the route of the railroad, could meet all the demands, as well of the railroad company as of the government and the general public. But this suggestion can have no weight in the present inquiry. For if, as intimated, the execution of the act of 1888 will result in no real good to the general public, and may even be injurious to the pecuniary interests which the government has in the Union Pacific Railway and its branches, that is a ques-

tion of public policy, with which the judiciary is not concerned, and the responsibility for which is with another branch of the government."

"We perceive no escape from the conclusion that it is entirely competent for Congress to add to, alter, or amend the acts of 1862 and 1864, so as to require the Union Pacific Railway Company, possessing the rights and powers of its constituent companies to maintain and operate, by and through its own officers and employees, telegraph lines for railroad, governmental, commercial, and other purposes, and to exercise, itself and alone, all the telegraph franchises conferred upon it. It is enjoying the bounty of the government subject to the condition, among others, that it will perform these duties whenever so required by Congress.

"The purposes of the 4th section of the Idaho act is quite apparent. Its effect was, as we have heretofore said, to relieve each of the railroad companies named in the act of 1862 from any present obligation to construct a telegraph line on its roadway, by means of an 'arrangement' with the United States Telegraph Company for the construction of such a line. But no arrangement could be legally made under that act which tended in any degree to defeat the great objects of the acts of 1862, and the act amendatory thereof, of July 2, 1864, Chap. 216. The act of 1862 did not authorize the railroad company to agree that it would not itself, at some future time, construct and operate a telegraph line for the use of the government and the people. Nor did it, by terms or implication, repeal or modify the clause in that act by which Congress expressly reserved the power to add to, alter, amend, or repeal, the latter act, having due regard to the rights of the railway companies named in it. Certainly it could never be held that a due regard to the rights of either the railroad company or of any corporation claiming under it required that the government, charged by the Constitution with the duty of regulating interstate commerce, should permit the railroad company receiving national aid to invest a corporation, not deriving its authority from the United States, with the exclusive right to enjoy its roadway—a national highway—for purposes of telegraphic communication between the States."

(111). Your petitioner shows that there are apparently but two places in all the legislation of Congress touching the premises, in which it is contemplated that any other companies than those herein referred to might come into possession of said road.

(112). In the last part of the 15th Section of the Act of July 1st, 1862, already hereinbefore quoted as the principal enactment on which this petitioner relies for standing, it is said:—

"Wherever the word Company is used in this act, it shall be construed to embrace the words, their associates, successors, and assigns, the same as if the words had been properly added thereto."

(113). These words in a conveyance to a quasi-public corporation simply limit the estate but do not authorize

a transfer of it. Except this, and as stated in the next section which authorizes the consolidation of any two or more of the companies mentioned in the Act, successors and assigns are not contemplated in the Act. It is submitted that while such consolidation is the only succession authorized (and there can be none without the authority of the creating sovereign), it is also the only succession contemplated. Otherwise, by the express terms of the Act, the successor would have to assume not only all the public and quasi-public duties, but the first mortgage bond and subsidy indebtedness to the United States too, which pertained to and bankrupted its predecessor.

(114). The other place is Section 6 of the Act of June 19th, 1878, which created the office of Auditor of Railroad Accounts, and required the bond-aided roads to make reports to him, and said:

"This act shall apply to any and all persons or corporations into whose hands either of said railroads may lawfully come, as well as to the original companies."

which it is submitted was limited to the only "lawful" succession then authorized, that arising from consolidations between the companies themselves.

(115). Your petitioner begs leave to emphasize that there are but three possible or authorized destinies for this road under the law as it exists which can secure "the supreme objects to be attained" in its creation, and they embrace all the right to succession with which the sovereign creator of the Union Pacific Company endowed it.

First: Its own perpetual existence;

Second: Consolidation with any of the other bond-aided roads that were subject to like duties; and

Third: Forfeiture to the United States.

(116). These are all that, according to the title of the Act can "secure to the Government * * * for postal and military purposes * * * a railroad * * *

from the Missouri River to the Pacific Ocean," and according to the Act that "the whole line * * shall be operated * * so far as the public and government are concerned * * * as one connected continuous line," and always subject to this:—

"And the better to accomplish the objects of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, Congress may at any time, having due regard for the rights of said companies named herein, add to, alter, amend or repeal this act." Sec. 18, Act July 1, 1862.

(117). Your petitioner shows that forfeiture to the United States, even if insisted upon, would not be so hard upon and disastrous to the companies as foreclosure sales and said bond-aided companies are or should be equally interested in opposing any sale in the premises. By existing laws, the Secretary of the Treasury is empowered upon certain conditions to compromise any claims due to the United States.

Rev. Stat. U. S., Sec. 3469.

And very likely would be glad to do so but without relieving the companies of their public and quasi-public duties which were the supreme objects to be attained in their creation.

By still other laws, the Solicitor of the Treasury has charge of all lands or other property which may come into the possession of the United States for the payment of debts.

And when real estate becomes the property of the United States in payment of debt, and the debt is afterwards paid, the Solicitor of the Treasury may release said real estate to the debtor, which would probably apply to the payment of a compromise sum.

Rev. Stat. United States, Sections 3750-3751.

These provisions constitute a valuable right and interest to said Pacific Railroad Companies, which should not be taken away or impaired by foreclosure.

(118). Your petitioner begs leave to call the attention of the court to the fact that the period of the receivership herein has been the most depressing and disastrous to railroad enterprise and business of any that has been known, and that there is strong reason for believing that, with a return to normal times and business, said Union Pacific Railway Company, under careful management, can discharge all of its just obligations.

(119). Wherefore, for all and singular the foregoing, your petitioner submits that not a single interest in the premises appears whose just rights cannot be better served by a discharge of these procedings and a recommitment of the properties involved to said Union Pacific Railway Company under such prudent safeguards and supervision as this Court may see fit to impose, until the sinking fund aforesaid shall, if ever, be insufficient to meet said first mortgage bonds as they mature, or until the United States may take possession under its rights aforesaid, than by wrecking said company in any proceedings of sale in foreclosure; and that the design and effect of any such sale is and will be the sacrifice to a greater or less extent of every other interest involved, both public and private, for the inordinate benefit and enhancement in reorganization of certain selected securities held or controlled by a volunteer Reorganization Committee, formed, as your petitioner is informed and believes, to realize unmerited gains out of the loss and distress to be sustained and borne by the United States and the public and by private interests not taken care of in such contemplated proceedings.

PART FIFTH.

THE COMPLAINT.

(120). Your petitioner, relying upon its rights and interests and the rights, powers, and interests of the

United States and the Congress thereof and the powers and duties of the President and other officers of the United States and the rights and duties of the Union Pacific Railway Company, its constituents and predecessors in the premises, and showing that any foreclosure except by and in behalf of the United States, and that all foreclosure sales of said railroad would be in derogation thereof, repugnant thereto, and unauthorized, says and complains:—

(121). That said Union Pacific Railroad Company received subsidy bonds under the acts aforesaid to the amount of $27,236,512 in the par value thereof, and issued its first mortgage bonds to the amount in the par value thereof of $27,229,000, and purported to make a mortgage to secure the same to one Edwin D. Morgan and one Oakes Ames, as trustees, both of whom, since deceased, have been succeeded in said alleged trust by one F. Godron Dexter and one Oliver Ames, Second, and by which alleged mortgage said Union Pacific Railroad Company purports to have conveyed to said trustees, as your petitioner is informed and believes, all and singular its said railroad and telegraph line and all its real and personal estate, franchises, and property then owned or thereafter to be acquired by said railroad company, all on condition that for six months' default said trustees may take and operate said railroad on the request of a majority of the defaulted bonds and for one year's default may sell all of said mortgaged premises at auction on the request of a majority and for the payment of all said outstanding bonds regardless as to whether all shall have matured or not. But said mortgage does not purport to authorize any foreclosure by judicial proceeding against the United States or anybody else and does not purport to warrant any bar, but expressly preserves the right of redemption upon the payment at any time of the indebtedness thereby secured.

(122). And your petitioner says that the predecessors of said Kansas Pacific Railway Company received subsidy bonds under the acts aforesaid to the amount in the par value thereof of $6,303,000, and as your petitioner is informed and believes that one Henry M. Alexander and one John F. Dillon claim to be mortgage trustees under one mortgage, and said Dillon and one John A. Stewart claim to be mortgage trustees under another mortgage made by the predecessors of said Kansas Pacific Railway Company to secure an issue of alleged first mortgage bonds of said predecessors to the amount in the par value thereof of $6,303,000 and the above-named trustees claim, as your petitioner is informed and believes, that said alleged mortgages constitute liens upon the same property covered by, and that they are prior to, the lien of said $6,303,000 subsidy bonds aforesaid; that Russell Sage and George J. Gould claim to be trustees under another mortgage dated May 1st, 1879, which purports to be secured by certain lands and, among others, by substantially all the first mortgage bonds (not in sinking funds) on the Kansas Pacific road from the 394th mile post west by way of Denver to Cheyenne.

(123). That afterwards and after said Union Pacific Railway Company and the properties thereof had been put into the hands of receivers, as hereinbefore set forth, a certain association was formed under the name of the Reorganization Committee of the Union Pacific Railway Company, composed of Louis Fitzgerald (chairman), Jacob H. Schiff, and Chauncey M. Depew, all, as your petitioner is informed and believes, of the city, county and State of New York and citizens of said State, T. Jefferson Coolidge, Jr., and Oliver Ames, second, both, as your petitioner is informed and believes, of Boston, Massachusetts, and citizens of said Commonwealth, and Marvin Hughitt, a citizen, as your petitioner is informed and

believes, of the State of Illinois, and a resident of Chicago in said State.

(124). That the purpose of said Committee was to induce the holders, except the United States, of the various kinds of bonds, except the subsidy bonds, secured upon the main stem of the Union Pacific Railway Company, including the Kansas Pacific Line, "to combine," regardless of whether their respective holdings had matured or were in default or not, and especially so to induce "first mortgage bondholders" so "to combine for an enforcement of their prior lien."

(125). And to that end said Committee represented that the lien of the United States on the easterly end of the main line began at Omaha, and of the Kansas City line at Kansas City (exclusive of the Kansas City, Missouri terminals) that the United States had no lien on the Kansas City line west of the three hundred and ninety-fourth mile post, nor on the Leavenworth branch, so-called, nor on the Cheyenne division.

That eminent counsel had advised that the lien of the first mortgage bondholders might be effectively foreclosed, and that while it was desirable to make a settlement with the United States and to continue efforts in that direction, further delay on the part of the first mortgage bondholders in protecting themselves by securing their legal rights, would be likely to become dangerous and to result in loss.

That they, said Committee, "have been asked by large interests to formulate and proceed with a reorganization which shall at once secure to the holders of the first mortgage and other bonds requiring consideration in reorganization, a full return in new securities of the successor company with fixed charges based upon the lowest results from the operation of the main line and

the Kansas Pacific and Denver Pacific lines, which have been obtained during the times of the greatest depression."

(126). That said Committee had formulated a plan which it was believed "fully carries this purpose into effect."

That under said plan said Committee "proposed through such foreclosure proceedings as the Committee shall cause to be instituted or shall adopt, or through such other means as the Committee shall determine, that a new company shall succeed to (or that the present company reorganized upon the basis of indebtedness fixed in this plan shall retain) the main lines and lands covered by the mortgages included in the plan."

That under said plan the new Company shall issue the following securities:—

First Mortgage Railway and Land Grant, Fifty-year four per cent. Gold Bonds,	$100,000,000
Four per cent. preferred stock,	75,000,000
Common stock,	61,000,000
Total,	$236,000,000

(127). Your petitioner shows that the whole amount of bonded indebtedness, except that due to the United States, taken into account in the capitalization and bond issue proposed, amounts to only about fifty-five millions of dollars.

That if the entire indebtedness due to the United States, both principal and interest, and the entire capital stock, too, were also taken and added to the bonded indebtedness included as aforesaid, the whole amount of all thereof would fall some sixty millions short of the enormous issues of securities contemplated in said plan,

the greater part of which excess is, by said plan, allotted in bonuses to mortgage bondholders other than the United States to induce them to come into said plan, and to said Reorganization Committee and its associate syndicate, as hereinafter mentioned, as compensation for alleged anticipated services.

(128). That the whole provision which said plan purports to make for the payment of the lien indebtedness due to the United States, which, if reduced by the application thereto of the sinking fund, hereinbefore mentioned, would amount to about fifty-five millions, was thirty-five millions in said proposed first mortgage bonds and twenty millions in said preferred stock; and that by the agreement hereinafter set forth, said sum is reduced to a possible minimum of less than thirty millions in cash. Whereby, if bonds may be sold for money with which to pay the same, the whole amount of public and private bonded indebtedness taken into account by said Reorganization Committee need not exceed ninety millions of dollars, and which embrace substantially all the value to be represented by said proposed issue of two hundred and thirty-six millions of stocks and bonds on said property.

(129). That, therefore, by said plan, a foundation will be laid for the contention that rates of fare charged for the service of said railroads, which Congress now has a right to reduce, when such rates exceed ten per centum of the cost of said road, may be imposed upon your petitioner desiring to connect with and upon the public generally using said roads, so as to yield a return to all these enormously watered, alleged representations of value; and all in derogation, as your petitioner is informed and

believes, of constitutional prohibitions of the State of Nebraska, in which the main stem of said line principally lies.

(130). That, further, to induce said first mortgage bondholders to come into said scheme, said Committee purported to enter into the following arrangement with a certain banking firm doing business under the firm name and style of Kuhn, Loeb & Co.:

"Through arrangements made with the Syndicate hereafter mentioned, the following cash provisions are made in respect to default and future interest on present first mortgage bonds of the Union Pacific and Kansas Pacific Railway Companies, as shown in detail below.

"First: The coupons now in default upon present first mortgage bonds are to be purchased in cash for account of the syndicate at the time of the deposit with the Committee of the bonds to which they pertain.

"Second: Coupons maturing on deposited first mortgage bonds in the interval between the deposit thereof under the plan and the date from which bonds of the new company are to bear interest (Jan. 1st, 1897) are to be purchased by the syndicate from the Committee, which, in turn, shall apply the amounts so received at the respective due dates of the coupons to the payment of corresponding installments on its outstanding certificates applicable to such deposited bonds. * * * The proportion of the current semi-annual interest installments which shall have accrued on January 1st, 1897, on such of said bonds as do not bear January coupons, shall be likewise provided for in cash at the time of the delivery of the new bonds."

That—

"During the pendency of the plan and when it shall be declared operative, the depositor, under the Reorganization Agreement, of a $1,000 bond of either of the following classes:

Union Pacific,
Kansas Pacific, Eastern Division,
Kansas Pacific, Middle Division,
Kansas Pacific, Denver Extension,
} First Sixes,

will receive:—

"1st. Cash for all defaulted coupons on the date of deposit.

"2d. A certificate entitling the holder to compound interest upon the same when allowed by the Court.

"3d. Cash for all maturing coupons on the respective dates of their maturity to the date from which the new bonds will commence to draw interest.

"4th. Six per cent. to January 1, 1897, on bonds maturing in 1895 and 1896, payable semi-annually.

"5th. Cash for the rate difference of 2 per cent. between the old and the new bonds, on bonds maturing subsequently to January 1, 1897, from January 1, 1897, to the date of maturity of the old bond.

"6th. $1,000 in a new 50-year first mortgage gold bond bearing 4 per cent. interest from January 1, 1897.

"7th. $500 face value in preferred shares of the new corporation.

* * * * * * * * * *

"Upon any just and conservative valuation which may be placed upon the new first mortgage bonds and the new Preferred Stock offered in exchange for the principal of the present first mortgage bonds, these new securities will be found to merit such market price as to make the exchange clearly desirable from the standpoint of realization value."

(131) On the other hand, and to enable said Reorganization Committee to acquire power and control over said Union Pacific Railway Company in aid of its purposes aforesaid, the stockholders therein were induced to surrender their stock to said Committee and to pay an assessment of fifteen dollars per share on their stock to aid said Committee in its purposes by representation as follows:

"The common stock of the present company will be assessed $15 per share Shareholders paying the assessment of $15 will receive the amount of the assessment (viz., $15 per share) in new preferred stock at par, and will also receive par of their present common stock in common stock of the new company.

"Shareholders who do not pay their assessments as called will forfeit their rights. The stock assessment will be underwritten before the plan is declared operative.

"The proceeds of the assessment will be applicable to the cash requirements of this plan as herein provided, and to such requirements as shall be fixed and determined by the Committee, including such expenses and charges as it shall make or incur in the premises; and suitable compensation to the members of the Committee"

(132) Both bondholders and stockholders were required to act on the respective inducements held out to each promptly on the representation that—

"The time for the deposit of bonds receivable under this plan and of the shares of stock of the present company is limited to December 31st, 1895, after which no bonds will be admitted except upon the payment of a penalty of five per cent.

"The Committee moreover may at any time decline to receive further deposits of securities, and should, under any settlement with the United States Government, a foreclosure under the first mortgage alone become requisite, first mortgage bondholders who have not deposited may suffer material detriment and forfeit important advantages. * * *

"Upon shares of stock deposited after the time above limited (December 31, 1895), the assessment will be at the rate of $20 per share. After the expiration of the limit of time, the penalty of $5 per share will be payable at the time of the deposit and will not be refunded."

And that—

"Holders of securities not deposited in the manner herein provided within the time so fixed, limited, extended or renewed, will not be entitled

to deposit the same or become parties to this agreement or share in the benefits thereof, and shall acquire no rights thereunder except by express consent of the Committee, and on such terms and conditions as the Committee may prescribe."

(133) And in respect of said reorganization syndicate, said Committee represented to said security holders:

"A Reorganization Syndicate has been organized under the management of Messrs. Kuhn, Loeb & Company, bankers, to furnish the sum of ten million dollars for the following purpose:

"1. To purchase all the interest coupons on first mortgage bonds now in default.

"2. To purchase, as they shall mature hereafter, the interest coupons on first mortgage and also the semi-annual assignments of interest accruing on bonds already matured during the pendency of the plan and until it shall become operative.

"3. To purchase, if it shall be found advisable for the promotion of the reorganization, any outstanding first mortgage bonds and Omaha Bridge bonds, and to deposit the same under this plan, and if it shall be found advisable to purchase all or any defaulted or future maturing coupons or interest assignments on Omaha Bridge bonds.

* * * * * * * *

"Such steps shall be taken in respect of all purchased coupons and interest assignments as will secure a valid claim for cumulative interest in favor of the Reorganization Syndicate.

"The right is reserved in behalf of the Committee, with the assent of the bankers, to call for an increase of the amount required to be advanced by the Syndicate to fifteen million dollars.

"The Syndicate is to advance a sum not exceeding $100,000 for expenses, repayable with interest at six per cent. Interest after the plan shall have been declared operative. All advances made by the Syndicate shall be repayable in gold.

"Six million dollars of preferred stock are to be turned over as compensation to the syndicate, of which the bankers are to retain one million as their own compensation."

(134). Your petitioner says that the plan of said Reorganization Committee, as aforesaid, was printed and was widely advertised, to the end that it might come to the notice of security holders; and that, annexed to the plan, was a draft of an agreement which all depositors of securities were to sign, which provided that said Reorganization Committee should have such transfer assignments and powers of attorney as should enable said Committee to vest the title in all such securities in themselves.

Your petitioner craves leave to refer to said plan and agreement at the hearing.

(135). And your petitioner, upon information and belief, says that nearly all of the bonds of the kinds embraced in said plan of reorganization, and nearly all of the stock of said Union Pacific Railway Company, have been deposited subject to the control of said Committee, as required by said plan.

And your petitioner, on allegation of information and belief, submits that the purpose of said plan and agreement is manifestly, upon the face thereof, to wreck and destroy said Union Pacific Railway Company, together with all the stock interests therein and many of the junior securities thereof, also all ability on the part of said company to fulfill the purposes for which it was created and aided by the United States, or to perform its duties to the United States and the public and localities and to your petitioner and other interests, as hereinbefore set forth, and all value in and sources of payment for any balance of its indebtedness to the United States, and all unsecured indebtedness, and so that another company which said Reorganization Committee may form or cause to be formed shall succeed to all its properties, including its said railroad and telegraph lines freed from the obligations and servitudes which pertain to said existing company and the properties thereof, as hereinbefore set forth.

(136). And in like manner submits that said plan and agreement are usurious and champertous and disclose a purpose of maintenance, especially in behalf of said first mortgage bondholders.

All to be accomplished by confederacy between said Committee and the members thereof and said Syndicate, wherein is also expressly disclosed a purpose to achieve important advantages for the security-holders who come in under their

plan, whereby and in comparison with which other holders of like securities will suffer material detriment.

(137). And your petitioner, on allegation in like manner of information and belief, submits that said plan and agreement, taken in connection with the action of said Reorganization Committee under and in pursuance thereof, also constitute a confederacy or conspiracy offensive to the United States and the people thereof, and in derogation of and detrimental to their power and interests.

(138). Thus your petitioner, on information and belief, alleges that said Reorganization Committee assembled said bonds and stocks under advice, belief or pretence and representation that it would thereby acquire rights and powers against the United States, which, in the absence of any compromise with the United States, it would exercise all as follows:

That the lien of the first mortgage bonds covered other property, railroad, terminal, bridge and equipment not included in the subsidy lien of the Government. That the first mortgage bondholders might foreclose the Government out of its interests in the property, just as they might foreclose individuals. That the Government is in the position of any other creditor. That notice could be given to the United States, and, if they failed to resort to their right of redemption, the legal effect would be an estoppel. That the Reorganization Committee would have all the power they needed to foreclose, and that no legislation on that point was necessary. That such proceedings should result in foreclosure sale at which the Reorganization Committee would probably be the purchasers, or a committee designated by it as purchasing trustee.

That in such sale the franchise of the company would be sold, and the right of the United States to keep and maintain

directors in that corporation would be extinquished, as well as any obligation of that character. And that the right of the United States to the transportation of its soldiers, munitions of war, and mails would become a common law obligation of the road after it had gone into private hands, like the right of the United States with reference to any road; and that a syndicate of aliens could, under the general rule, become the purchaser of the property including its franchises.

(139). In this connection, and in connection with the fact that the Reorganization Committee contemplated becoming the purchasers for the benefit of the depositors of the securities, your petitioner calls attention to the fact that three of the five depositories of securities are established in, and three of the five places in which publication is to be made of notices required under the plan are, London, Amsterdam, and Frankfort-on-Main.

(140). Your petitioner further, on information and belief, says that said Reorganization Committee itself was of opinion that there was absolutely no occasion for foreclosure, except as against the United States, and if that matter could be settled; yet, being advised that the right way to bring a suit for the securities they represented was in the name of the trustee of the mortgage, such suits were brought before said Reorganization Committee sought any legislation from Congress, and are now pending, for the effective sale of the property free from all equities or redemption in the United States named therein, and a monition was served upon the Government notifying it of the pendency of the proceedings.

(141). Afterwards, as your petitioner is informed and believes, said Reorganization Committee addressed a statement to the Chairman of the Committee of the Senate of the United States on Pacific Railroads, expressing that the

Committee's view was that the Government could be foreclosed and that no outstanding right of redemption would be left open, but that the Committee would consider it better to agree with the Government on some just and equitable solution of the matter. And thereupon said Reorganization Committee appeared, by its representatives, before the Committees on Pacific Railroads for the Senate and the House of Representatives of the United States.

(142). And said Committees of the Senate and House formulated and reported to both said branches of Congress a proposed act, called the Funding Bill, for the release by the United States of its interests in said railroad, in accordance with proposition and terms proposed to said Congressional Committees by said Reorganization Committee, which bills were strenuously opposed by your petitioner because they made no substantial provision for the protection and preservation of the public and private rights and privileges in the premises, in which your petitioner is interested as aforesaid (except for a preferential use of said railroad for reasonable compensation by the Government), and because the Reorganization Committee's representatives opposed an amendment to said bill, which should protect your petitioner's said rights and interests.

(143). And said bill and the propositions thereof were, by a very large majority of the vote, utterly defeated and rejected in the House of Representatives on the eleventh day of January last past, and a motion to recommit was held under advisement by the Speaker of the House until the twelfth; and a few days thereafterwards a bill for the adjustment of the Government's interests in said railroads was introduced into the Senate by the Senate Committee on Pacific Railroads, and a like bill was shortly afterwards reported to the House by the Committee thereof; which bill,

as reported to the Senate, is there pending and is the first on its calendar, the passage whereof for the purpose, among others, of avoiding any threatened foreclosure proceedings in the premises, was urged by said Senate Committee in a report made to the Senate on the eighth of the present month, to which report your petitioner asks leave to refer.

(144). In the meantime and after the alleged or attempted services of notice or monition upon the United States in said prior foreclosure suits brought in behalf of the first mortgage bondholders, the Attorney-General steadfastly kept the Government out of said suit, though his special assistant in the matter had a good deal of conference with counsel for the Reorganization Committee, and the Attorney-General was advised of their contentions and that an attempt would be made to enforce the Government's appearance in the foreclosure suits with a view of giving a complete title to the purchaser in the foreclosure sale.

(145). That also, in the meantime, the Reorganization Committee, through counsel, urged upon the Attorney-General that the Government could be made party to a suit in which said Committee would oust the rights and interests of the United States if it failed to acquire them under the Funding Bill, until the Attorney-General, who, while believing that the appearance of the Government could not be compelled, was nevertheless pursuaded that in the threatened foreclosures a difficult problem was presented by the Government's ownership of a subordinate security upon property whose value he thought was generally believed to be insufficient to pay in full any but said first mortgage; and thought that, unless the Funding Bill was passed, the Government should endeavor to secure terms for its appearance in court in the way of an assurance of such a bid on the property, in

124

case of a judicial sale, as would secure it a fair realization of the value of its lien.

(146). That immediately upon the defeat of said Funding Bill, and in the midst of the activity of Congress aforesaid in the matter, the Attorney-General, in pursuance of his opinions outlined as aforesaid, was induced ostensibly to invite overtures from said Reorganization Committee to subject the interests of the United States in the premises to a judicial auction sale, and purported to enter into an agreement with said Reorganization Committee whereby, in consideration of a promised bid of less than forty-six million dollars to be made by or in behalf of said Committee, he agreed that the Government "shall at once take proceedings in the pending foreclosure suit," meaning the suit wherein foreclosure is sought of the lien of the first mortgage bonds, which, it is alleged, underlies the lien of the United States in the premises, "or by independent bills for the foreclosure of its" (the Government's) "lien upon the railroad and property of the Union Pacific Railway (which includes the Kansas Pacific line) by sale thereof, and for the sale of the sinking fund in the hands of the Secretary of the Treasury relating to the Union Pacific Railway Company. * * * * The sale of the sinking fund to be judicial or otherwise."

Said alleged agreement purports to be in the form of a correspondence, copy whereof, with a statement in respect of the same, the Attorney General furnished to the Senate in a communication addressed to the President of the Senate in response to a resolution of inquiry, a copy of which communication is hereto annexed and made a part hereof.

(147). And that in pursuance of the agreement and arrangement aforesaid, and to carry out the same, the Attorney-General filed his said original bill in behalf of the United States in the first of the above entitled causes, and

purported to enter or to cause to be entered an appearance and answer in behalf of the United States in the prior foreclosure suits aforesaid, being the second of the above entitled causes, with the intention that contemporaneous foreclosure sales should be made in both said proceedings. And your petitioner begs leave to refer to both of said bills, the pleadings therein, and records thereof, here on file for the purpose among others of showing that both contemplate a sale of said Union Pacific Railway and all statutory rights and claims of the United States, and the franchises embraced in the premises free and discharged of all claims of the United States or of said defendant Union Pacific Railway Company, and without regard to or any protection of the rights of the public or any member thereof in the premises.

(148) All and singular the foregoing acts of the Attorney-General were, as your petitioner is informed and believes, done at the request and in pursuance of the purposes of the combinations of interests effected by and in furtherance of the understanding, purpose, and interest of said Reorganization Committee and the members thereof and said Kuhn, Loeb & Company, and their associates, as hereinbefore mentioned and otherwise.

(149) And your petitioner submits, on information and belief, that the taking of its railroad from said Union Pacific Railway Company and the vesting thereof in a new corporation in the manner and with the effect contemplated by said Reorganization Committee would and are designed to impair or destroy the rights, powers, and interests of the United States and the public now secured as aforesaid, as not applicable to said new corporation, as follows:

To preserve the right of your petitioner and others in like situation to build railroads to connect with said Union Pacific Railroad at such places and on such just and equit-

able terms as the President of the United States may prescribe.

To require said Union Pacific Railway Co. to have and retain the roads and equipment essential to the performance of its duties, both to the United States and every part thereof and to the people, and to operate said road as now required by law and subject to existing rights of Congress to reduce the rates of fare thereon.

To have said road subjected to all the servitudes imposed upon it for the benefit of the Government or the public, especially including herein subjection to an effective exercise of the statutory rights and powers now secured to the United States and to the people, as hereinbefore set forth.

To add to, alter, amend, and repeal the Act of July 1st, 1862, aforesaid, "the better to accomplish the objects" of the said Act, "namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to secure to the Government at all times (but especially in time of war) the use and benefit of the same for postal, military and other purposes."

To enact special legislation in behalf of the United States' own interests in respect of said road, as the United States may now do, both of sovereign right and under said Act of 1862.

To prevent, especially in time of war, any alien or hostile interests from acquiring, operating, or destroying said road as the private property of such interests.

To require that said road and the branches thereof, and the Central Pacific Railroad in connection therewith, be kept in repair and in working order, and to take the income of all said roads to repair any part of either.

To have supervision over and knowledge of and a voice and vote to determine the purpose of the directorate of said Company by representation of the Government on said Board.

To require reports concerning said road to be made to the Commissioner of Railroads of the United States or to any other officer or bureau of the Government.

To have the books, records, correspondence, and all other documents of said Company open at all times to the inspection of the Secretary of the Treasury or such persons as he may designate.

To secure that "the whole line of said railroad and branches" (including the Central, Union and Kansas Pacific Roads), "shall be operated and used for all purposes of communication, travel and transportation, so far as the public and the Government are concerned, as one connected, continuous line."

And other reciprocal obligations imposed upon said bond-aided railroads by Section Fifteen of the Act of July 2, 1864. Any refusal to comply with which requirement now constitutes, as provided in the Act of June 20th, 1874, a penal offense against the United States, punishable by imprisonment and also by punitive damages to any of the public aggrieved by such refusal.

To prevent the payment of any dividends to the stockholders of said Company except out of net earnings, which to do was forbidden generally by the Act of March 3d, 1873, and which payments, if made, when the requirements of the Thurman Act are not complied with, are in the sixth section of said Act made a penal offense against the United States, punishable by imprisonment.

To prevent the creating of any mortgage or pledge upon the property or earnings of said Company, without leave of Congress, except for the purpose of funding and securing

debt existing on March 3d, 1873, or renewals, which to do is now, as provided in the Act of Congress of said date, a penal offense against the United States.

To have the rates of fare on said railroad reduced by Congress, if unreasonable, when they exceed ten per centum of the cost of said road.

To secure a right of other railroads to connect with said Union Pacific Railroad on such just and equitable terms and at such places as the President may prescribe.

And other like rights and immunities for the benefit of the United States, the various sections thereof, and the public and private interests affected or involved.

(150). And your petitioner says that counsel of said Reorganization Committee is also of counsel in the foreclosure proceedings of the second of the above entitled suits, and of Russell Sage and George J. Gould in their proceedings to foreclose the consolidated mortgage aforesaid, and that the co-operation of interests to effect a foreclosure against the United States was so apparent in the examination of one of the Receivers before the United States Senate Committee, that a senator conducting said examination (Senator Brice) declared:

"It is apparent from what examination has been had, that on the threshold of this whole matter there is a cloud on the action of the Receivers, and of the Trustees, and Counsel, and on the whole fabric. It is true (and I think you should explain to the Committee) that there is practically but one mind in charge of all the various phases of the case, and that the divisions and partitions between them are merely technical—I mean between the Mortgage Trustees and the Counsel."

(151). And your petitioner, upon information and belief as to the construction to be put upon the acts and doings of the Reorganization Committee and the organization thereof and of its associates and beneficiaries, submits that they constitute and effect a combination, both unlawful in itself since, among other reasons, it is champertous and

embraces maintenance as above submitted, and unlawful in its purposes since they offend against the United States as aforesaid.

(152). Your petitioner, on information and belief, says that said Reorganization Committee make various pretenses in the premises, as follows:

That it has a lawful and enforcible contract with and against the United States by virtue of its correspondence with the Attorney-General aforesaid, and the deposit made by it, or, if not, then that it should not itself be bound and may withdraw said deposit for want of consideration.

That under the provisions of the Act of March 3rd, 1887, aforesaid, and under the direction of the President, the Attorney-General had authority to enter into said agreement and can carry it out.

That said agreement is necessary and in time pressing for the relief and payment of first mortgage bondholders.

That otherwise and by virtue of his office, the Attorney-General could enter into said agreement and carry out the same in the lawful exercise of his official duties.

That his authority includes the power to sell the sinking fund in the hands of the Treasurer of the United States.

That said agreement does not usurp functions more appropriately pertaining to the Secretary of the Treasury or to Congress.

That said agreement is in its provisions wise, fair, and equitable for and not unconscionable toward the United States.

That your petitioner and others of like interests and the public have no standing herein to oppose.

That the Court can do full justice and equity to all interests concerned.

(153). But your petitioner, on information and belief, charges to the contrary of all and singular the foregoing

pretenses as hereinbefore set forth, and further, on information and belief, says that the truth and fact thereof are as follows:

That said alleged agreement between the Attorney-General and said Reorganization Committee is not a lawful and enforcible contract against any or either party, and neither that nor said alleged deposit of $4,500,000 therein mentioned afford any security to the United States that said agreement would be observed or performed before this or any other Court having jurisdiction, or otherwise or elsewhere, none of said Committee being a party to any of said suits, nor are they or any of them or said deposit within or subject to the jurisdiction of this Court.

(154). The Act of March 3rd, 1887, by the true construction thereof, as hereinbefore shown, contemplates the acquisition by the United States and subrogation to and foreclosure of any forcloseable mortgages which the United States had expressly authorized to be placed upon parts of said property; also foreclosure of the lien declared to the United States in the Thurman Act so far as any such lien was necessary to cover property not derived from and which, therefore, on forfeiture, would not revert to the United States.

Beyond this, it is submitted the Act would become obsolete as a remedy in behalf of the United States and superseded by the operation of the forfeiture acts in six months after any default.

Further than this, it is apparent that the Act affords no justification to the Attorney-General for his action or the direction of the President thereto, since the Act is, by its terms, to be invoked only when, in the opinion of the President, it shall be necessary to avail of it for the protection of the security and interests of the United States as against prior liens lawfully liable to be enforced, in which event it is the duty of the President to direct the payment of such prior liens.

(155). It is not pretended or averred that the President entertained any such opinion of necessity, or that any such necessity did, in fact, exist, but to the contrary thereof the Attorney-General's bills show that it did not exist for they declare that the Attorney-General had not entered the appearance of the United States in the prior foreclosure suits, and his published report shows that his refusal so to do was, in his opinion, a perfect protection to the United States as against such suit.

(156) It is further submitted there are no foreclosure statutes or common law of the United States to regulate the matter, and in the absence of such the only foreclosure contemplated in said Act when operative is strict foreclosure and not foreclosure sale.

That this is especially true when, as in this case, the defendant is not in possession and if in default its titles and franchises have reverted to and vested in the United States for breach of condition and forfeiture. The Government cannot foreclose against itself and there is nobody else to respond.

Your petitioner has hereinbefore shown that said agreement was not necessary for the relief of the first mortgage bondholders while the sinking fund on which they constitute a first charge is larger than the amount of such bonds that have matured, and that it is good equity that they exhaust that special security before ousting or competing with other or junior creditors for participation in a common security or general asset of an insolvent.

That the Attorney-General had no authority to make the agreement by virtue of his office or in the exerise of any duties imposed upon him as a law officer of the Government. On its face it is apparent that the transaction was not of such intendment as may be relegated to the Department of Justice, but was in substance and truth a bargain

or compromise to the support of which the exercise of the Attorney-General's official functions in conducting litigation is subordinate and perfunctory.

That especially he could not agree to any sale or disposition of the sinking fund which by emphatic decision of the Supreme Court belongs to the Union Pacific Railway Company (99 U. S., 700), and the United States holds it subject to a prior lien and trust in behalf of first mortgage bondholders.

(157). The agreement, it is submitted, is a usurpation by the Executive Department of the functions of Congress, which tribunal was dealing with the matter when the foreclosure bills were filed, which bills, it is submitted, must either take the matter out of the hands of Congress or be stayed or dismissed.

Your petitioner submits that if Congress has the right to legislate in the premises, neither the Executive nor Judicial Departments of the Government can terminate the right without the consent of Congress. To show the pending action of Congress in conflict with the pending proceedings herein, as well as to support many of your petitioner's claims herein, and to show the unwisdom of any foreclosure sale in any of the above entitled actions, your petitioner begs leave to again refer to a report recently (April 8th, 1897) made to the Senate of the United States by the Committee thereof on Pacific Railroads.

While the refunding bill aforesaid was properly before Congress and was under debate, your petitioner procured a proposed amendment thereto to be presented and read, designed to protect certain of the rights and interests of your petitioner in the premises, as hereinbefore set forth, which amendment said Reorganization Committee, by representatives of the interests thereof, opposed, and said Committee of the House, having said proposed act in charge, rejected said amendment, which rejection, as your petitioner is in-

formed and believes, largely contributed to the defeat of said bill; and your petitioner says that said bill was, in the main, supported by the representatives of States whose people were financially interested, and was, for the most part, opposed and defeated by the votes of representatives of States whose people were largely dependent upon the operations and connections of said road and the service to the public to be thereby secured; and that, immediately following said defeat, other bills were in preparation and to be introduced more in accordance with the seeming views and purposes of the majority than the defeated bill had been, when the foreclosure proceedings herein were instituted by the Attorney-General. And your petitioner shows that these and other like differences between the private interests involved seeking a compromise, and the public interests to be affected by the disposition of the railroads aforesaid, can be more appropriately contested and determined in Congress, where all the people are represented, than by the courts.

(158). The agreement and arrangement is unwise for and unconscionable toward the United States.

Your petitioner shows that the amount of cash required for completing the purchase at such sale is so enormous that preparation to meet the same by more than one or two parties practically forbids competition, and that such improvident forced sale would presumably discharge all persons collaterally or remotely liable for the payment of said indebtedness to the United States, or liable to contribute to any fund which should be available therefor, especially including stockholders in said Union Pacific Railway Company, its constituents and predecessors to pay up unpaid subscriptions to the stock of said companies.

Such sale would subject to the risk of a cash bid of forty-six millions all the security the Government has for a claim of about seventy millions, thus imposing a probable loss of about twenty-five millions on this property alone, and a

possibility of large liability to first mortgage bondholders for selling the sinking fund on which such first mortgage bondholders assert a first lien, and especially that such sale would seemingly be inevitably ruinous of the value of a similar lien of the United States for about sixty millions now maturing upon the Central Pacific Railroad, for which road, in the event of the sale herein contemplated, there would be no connection or outlet to the East in or over which the United States would have any interest or control.

In the report of the Senate Committee on April 8th, 1897, it is said:

"It is confidently believed by the committee that a result can be reached through and by means of a commission which will be much more advantageous to the interests of the United States than could be reasonably anticipated by, or as the result of, a suit for the foreclosure of the Government's lien, which, as has been stated, would undoubtedly necessitate the foreclosure of the paramount lien securing the first-mortgage bonds."

In the report of the majority of the House Committee of February 11, 1897, it is said as follows:

"Again, it is thought by many, and strong grounds to sustain it that a better price can be obtained for the Union Pacific and Central Pacific railroads, if sold jointly, than can be if sold separately. It would be prudent at least to make a test of this, which can only be done by having some proper tribunal to represent the Government."

And in the report of the minority of that Committee:

"Besides, there are more lawsuits than property to be sold, and until these can be determined, nobody would dare to bid save this reorganization committee that controls the junior and contesting interests."

"But the great loss will fall on the sale of a similar lien which the Government has for about sixty millions on the Central Pacific. The Union Pacific is the only eastern connection of the Central Pacific, in or over which the Government has any interest or control, and when that is gone, the Government's second mortgage on a road running from San Jose to 5 miles west of Ogden would be of but little, if any, value. Everybody now understands this, and the most eminent experts in the country say it would not be merely a blunder but a crime to sell the two roads separately."

And we beg leave to refer to perhaps as good expert testimony as can be found in the country, in our quotation from the statements of Stuyvesant Fish before the House Committee as hereinbefore stated.

The agreement fixes the price first, and the Attorney General's bill provides for finding out what is to be sold afterwards. There are the widest possible differences of

opinion among lawyers and others of special and expert knowledge in the premises as to the nature and extent of the Government's liens aforesaid, and what, if any, are the underlying liens, or what they cover; and equally wide differences as to what the assets of the Union Pacific Railway Company are, and what of them are subject to the Government liens or available to the payment of the indebtedness so secured. These differences, none of which have been judicially ascertained, measured in money, amount to very many millions of dollars, among which is the question as to whether the Government's lien covers the Omaha and Council Bluffs terminals and the bridge between the same, which has been a subject of constant debate in Congress, the doubt and gravity of which have been stated to Congress by the receivers of said property, and which question is generally thought to involve an interest of the value of ten million of dollars; also a question as to whether the income of the Union Pacific Railway Company invested in new and branch lines while that Company has been, by anticipation and as shown in the Thurman Act insolvent, can be followed, which question is estimated to involve between twenty and thirty millions; also the question as to whether the lien declared in the ninth section of the Thurman Act is constitutional, which is pertinent to determine whether the Government's lien covers land and securities in one trust to the nominal value of more than ten millions, and in another trust of nearly one hundred millions, and other large properties, and if so, what the order or priority of such liens may be.

That there is a further question as to whether the roads can be sold free from the servitudes imposed upon the same by existing laws in behalf of the Government and public, including the conflicting contentions as to the right of the Government to retain in priority of the interests of any first mortgages all compensation for services to the Government, until the indebtedness for the aid to said roads furnished by the Government shall be fully paid, which compensation

now amounts to about fifteen hundred thousand dollars per year, and could be indefinitely perpetuated to that extent and retained by the Government, if the road should be sold so as to leave a deficit in the indebtedness to the amount contemplated in the guaranteed bid aforesaid. That other complications and great, like and unlike, uncertainties as to what constitutes the securities to the Government and its interest therein exist and concerning which a former Attorney-General, Mr. Olney, filed a paper in the first of the above-entitled suits, to which your petitioner craves leave to refer; all of which matters, it is submitted, should be ascertained and determined before there should be any offers of sale whatsoever.

(159) As to the two remaining pretences, your petitioner submits that if it is not entitled to standing herein, as is said in one of said pretences, then the Court does not have all parties in interest before it so as to do full justice as is said in the other.

Wherefore and forasmuch as your petitioner is without other relief in the premises:—

To the end that your petitioner's right to build a railroad to and to connect with the railroad of said Union Pacific Railway at such point and on such just and equitable terms as may be by law prescribed;

And that said terms may include in behalf of Sioux City and the Middle Northwest a reciprocal exchange of business and co-operation with the road and branches of said Union Pacific Railway, without adverse discrimination against the road of your petitioner or in behalf of said road of the Union Pacific Railway Company or any other branches or connections thereof; and that the rates of fare on said Union Pacific Railway Company may continue to be within the control of Congress and subject to reduction when unreasonable; and that such railroad, together with its branches and connections,

may be operated as a connected continuous line; and that in the first of the above-entitled cases the remedies of the United States, against the properties of said Union Pacific Railway Company for default, may be confined to forfeiture and reverter of all rights, privileges, franchises, and grants derived from the United States, and strict foreclosure of all liens of the United States upon all and any other properties of said Company;

And that there may be no enforcement of the indebtedness due from said Company to the United States in any foreclosure proceedings which shall impair the rights of your petitioner as aforesaid, and other public and quasi-public obligations of said Union Pacific Railway Company; and that in the second of the above-entitled causes there may be no foreclosure or foreclosure sale which shall impair the rights of your petitioner as aforesaid, but that the holders of said first mortgage bonds which have matured shall be required first to exhaust their remedies against the sinking fund held by the United States before resorting to foreclosure, while said Company is not in default except by the neglect of the United States to apply said fund as aforesaid to the payment of said bonds as they mature; and that in both the above-entitled suits the receivers may be directed to enforce the liabilities of certain of the stockholders for unpaid subscriptions, to the end that the creditors of said Company may be paid with the proceeds thereof;

And that in the third and all the above-entitled suits said defendant Union Pacific Railway Company may be required to defend and maintain its rights and immunities in the premises so that it may perform its duties and observe its obligations to the United States and the public, especially to your petitioner, as hereinbefore set forth; and that upon its failure or neglect to do so your petitioner may be admitted so to defend in the name and behalf of said Company;

And that the members of said Reorganization Committee of the Union Pacific Railway, hereinafter named, may be made parties defendant to this petition in each of the above-entitled causes, and that the first of said causes may be held to have been unauthorized, and dismissed, and the second premature and misconceived as to the remedy prayed for, and that the complainants in the first of said causes and the members of said Reorganization Committee and said defendant Union Pacific Railway may be required to answer this petition, but not under oath, and that they and each of them and their officers and agents may be enjoined and restrained from further prosecuting or participating in or promoting any foreclosure sale of the railroad or other property of said Union Pacific Railway Company or reorganization of said Company, and that no such sale may be had; and

In the alternative, but protesting against any such sale, that suitable provision may be made, in the decrees and orders therefor in all said cases, to preserve the right of your petitioner to build its railroad to and to connect the same with the road of said Union Pacific Railway Company at such place and on such just and equitable terms as may be therein prescribed, which shall include a right to connect therewith as a part thereof and to a fair reciprocal exchange of freight and traffic and co-operation with the road and branches of said Union Pacific Railway Company so as to form a part with it and its connection, the Central Pacific Railroad, of a continuous connected line from Sioux City aforesaid to the Pacific Ocean, all without adverse discrimination of any kind against the road of your petitioner or in behalf of said road of the Union Pacific Railway Company, or any other branch or connection thereof;

And that, should any judicial sale be found to be authorized and necessary in the premises, a master may be appointed to formulate and report to the Court a plan

for the same, which shall be protective of all interests concerned, especially those of your petitioner as hereinbefore set forth, and on terms which shall bring the purchase of the property to be sold reasonably within the means and resources of competitive and more than one or a few bidders;

And that your petitioner may be admitted a party hereto for the protection of its own rights and interests, as well as those of others in like situation with itself, who may choose to come in and be made parties hereto, and those of the public, as all or any of said rights or interests arise out of or rest upon any duties or servitudes undertaken or imposed upon said Union Pacific Railway Company, its constituents and predecessors, and its and their railroads and the operations thereof not due strictly to the Government as such and to make suggestion of all such duties and servitudes, due to the Government and the public, in which your petitioner and those in like situation with itself and the public have any interest;

And that your petitioner may have such other and further relief as the nature of the case may require and to your Honors may seem meet;

May it please your Honors to admit your petitioner as a party in each of the above-entitled causes, with full standing, to protect and defend all and singular the rights and interests herein asserted by your petitioner, and the rights or duties of others not otherwise protected or defended in said causes, on which the interests of your petitioner depend, with right to notice and to be heard on all matters touching the same, and to appeal and review, and to all other remedies and reliefs necessary, proper, or convenient in the premises, and that an order may be issued to be addressed to said Reorganization Committee and the members thereof, to-wit: Said Louis Fitzgerald, Jacob H. Shiff, and Chauncey M. Depew, all of the city, county and State of New York, and

T. Jefferson Coolidge, Jr. and Oliver Ames, 2nd, both of Boston, in the Commonwealth of Massachusetts, and Marvin Hughitt, of Chicago, in the State of Illinois, restraining them from further pursuing or seeking to pursue or enforce said alleged agreement between said Committee and the Attorney-General of the United States, to-wit, the agreement expressed in the communication hereto annexed; and a subpoena requiring said Committee and the members thereof aforesaid and said defendant the Union Pacific Railway Company to appear and answer all and singular the premises, in each of said suits, but not under oath, the benefit of answer under oath being hereby waived, and an order that all other parties to any of the above-entitled causes wherein this intervention is sought who may have or assert any interest in the matters of this petition to-wit:

Russell Sage and George J. Gould, both of No. 71 Broadway in the City of New York, as Trustees under a certain alleged mortgage known as the Consolidated Mortgage of the Kansas Pacific Railway Company, and also as Trustees under an alleged first mortgage upon the Cheyenne Branch, so-called, of the Union Pacific Railway Company, who appear by their Solicitor (among others), Winslow S. Pierce, of No. 195 Broadway in said City of New York.

John F. Dillon, of No. 195 Broadway, and Henry M. Alexander, of No. 120 Broadway, both in said City of New York, as Trustees under an alleged first mortgage of the Eastern Division of the Kansas Pacific Railway Company, and who appear by their Solicitor, Charles C. Deming, of No. 120 Broadway of said City of New York.

John A. Stewart, of No. 45 Wall Street, and the said John F. Dillon, of No. 195 Broadway, both in the City of New York, Trustees under an alleged first mortgage on the Middle Division, so-called, of the Kansas Pacific Railway Company, who appear by their Solicitor, Ed-

ward W. Sheldon, of No. 45 Wall Street, in said City of New York.

The said John A. Stewart, whose address is as aforesaid, and William Endicott, Jr., the latter, as your petitioner is informed, of Boston in the Commonwealth of Massachusetts, as Trustees under an alleged first mortgage of the Denver Extension, so-called, of the Kansas Pacific Railway Company, who appear by their Solicitor, the said Edward W. Sheldon, whose address is as aforesaid.

The Mercantile Trust Company, of No. 120 Broadway in said City of New York, Trustee under an alleged mortgage called the Kansas Division and Collateral Mortgage of the Union Pacific Railway Company, asserting, among other things, a first lien on the equipment of said Company, which appears by its Solicitors, Alexander & Green, and W. W. Green, all of No. 120 Broadway of said City of New York.

The Union Trust Company as Trustee under an alleged first mortgage upon the lands of said Union Pacific Railroad Company, which appears by its Solicitor, Wheeler H. Peckham, all of No. 80 Broadway, in said City of New York.

J. Pierpont Morgan, of said New York City, at the corner of Wall and Broad Streets therein, and Edward F. Atkins, of said Boston, as your petitioner is informed and believes, as Trustees under an alleged first mortgage on the Omaha Bridge, who appear by their Solicitors, Seward, Guthrie, Morawetz & Steele, of No. 31 Nassua Street, in the City of New York, and also by Wharton & Baird, of Omaha, in the State of Nebraska, in the New York Life Building therein.

The Central Trust Company, as Trustee under an alleged renewal mortgage, so-called, on said Omaha Bridge, which appears by its Solicitors, Butler, Stillman & Hubbard, and Adrian H. Joline, all of No. 54 Wall Street in said City of New York.

The Receivers of said Union Pacific Railway Company, a citizen and resident of the State of Missouri; S. H. H. Clark, of St. Louis, in the State of Missouri; Oliver W. Mink, of the Ames Building, in Boston, in the Commonwealth of Massachusetts; E. Ellery Anderson, of No. 27 Williams Street, and Frederic R. Coudert, of No. 100 Broadway, both in the said City of New York; and John W. Doane, of No. 45 Wabash Avenue in the City of Chicago, in the State of Illinois; and the collective address of all of whom as Receivers as aforesaid is No. 27 Williams Street in the said City of New York, and Ames Building, in the said Boston, who appear by their Solicitor, W. R. Kelly, of the Union Pacific Building, in the City of Omaha, in the State of Nebraska.

And said defendant, the Union Pacific Railway Company, has a principal place of business in said Boston, and in the said Omaha, in the State of Nebraska, and which appears by its Solicitor, said W. R. Kelly, whose address is as aforesaid.

And said Oliver Ames, Second, of the Ames Building, in the said Boston, and Samuel Carr, Executors, etc., the latter also of said building and city, in the care of J. H. Benton, Jr., Complainants in the third of the above-entitled suits, who appear by (among others) Harwood & Ames, of the City of Lincoln, in the State of Nebraska.

And the Complainants in the second of the above-entitled suits, said F. Gordon Dexter and said Oliver Ames, Second, both of said Boston, the address of the latter of whom is as aforesaid, who appear by their Solicitor, said Winslow S. Pierce, whose address is as aforesaid.

And in the first of the above-entitled suits, the United States appear by their Attorney-General, Joseph McKenna, of the City of Washington, District of Columbia, by their former Attorney-General, Judson Harmon, of the City of Cincinnati, in the State of Ohio, George

Hoadly, Special Assistant to the Attorney-General, of No. 22 Williams Street in the said City of New York, and John C. Cowin, Special Counsel for the United States, of the Ware Block, on the corner of 15th and Farnam Streets in said Omaha.

Louis Fitzgerald, of No. 120 Broadway; Jacob Schiff, of 27 Pine Street, and Chauncey M. Depew, of the Grand Central Station, all in the said City of New York; Marvin Hughitt, of No. 22 Fifth Avenue, in the City of Chicago, in the State of Illinois; T. Jefferson Coolidge, Jr., and Oliver Ames, Second, both of the Ames Building, in the said Boston; and all of whom are all of the members of the Reorganization Committee, hereinbefore mentioned, and whose collective address in such capacity is No. 120 Broadway, in the care of Alvin W. Krech, Secretary.

Kuhn, Loeb & Company, of No. 27 Pine Street, in the said City of New York, who have formed the Reorganization Syndicate hereinbefore mentioned.

Collis P. Huntington, of the said City of New York, the Vice-President of the Central Pacific Railroad Company.

be required by order of notice to be served upon said parties or their solicitors in such manner as the Court may direct to answer the premises, but not under oath, within a day therein to be limited; and to stand to and abide by such other and further orders, judgments, and decrees in the premises as to your Honors shall seem meet.

CREDITS COMMUTATION CO.,
Of Sioux City, Iowa,
By Its Solicitors,
JOHN C. COOMBS,
HENRY J. TAYLOR.

Of Counsel,
John C. Coombs,
25 Equitable Building,
Boston, Mass.
Henry J. Taylor,
Sioux City, Iowa.

STATE OF IOWA, }
COUNTY OF WOODBURY, } ss.

April 27, 1897.

I, Henry J. Taylor, having been duly sworn, state I am solicitor and of counsel for the foregoing petitioner Credits Commutation Company in the matter of said petition, that I have read the petition and know the contents thereof, and that the allegations and statements therein contained are true to the best of my knowledge, information and belief.

HENRY J. TAYLOR,

Subscribed and sworn to before me by the said Henry J. Taylor at Sioux City, Iowa, on this 27th day of April A. D. 1897.

(Seal)

E. A. BURGESS,
Notary Public in and for Woodbury County, Iowa.

April 28, A. D. 1897.

On the foregoing petition it is hereby ordered that said several parties named as respondents to said petition show cause before me in the Court Room of the Circuit Court of the United States in the city of St. Paul, Minnesota, on Thursday, the twentieth day of May, A. D. 1897, at ten o'clock in the forenoon, if any they have, why said petitioner, the Credits Commutation Company of Sioux City, Iowa, should not be permitted to intervene in said several causes as therein entitled, and to proceed in proper time to a hearing upon the matters presented by said petition, and that said petitioner give notice of said hearing to said parties respondent by mailing to each of them or their solicitors, to-wit:

Russell Sage, No. 71 Broadway, in the City of New York.

George J. Gould, No. 71 Broadway, in the City of New York.

Winslow S. Peirce, No. 195 Broadway, in the City of New York.

John F. Dillon, No. 195 Broadway, in the City of New York.

Henry M. Alexander, No. 120 Broadway, in the City of New York.

Charles C. Deming, No. 120 Broadway, in the City of New York.

John A. Stewart, No. 45 Wall street, in the City of New York.

Edward W. Sheldon, No. 45 Wall street, in the City of New York.

William Endicott, Jr., of Boston, Massachusetts.

The Mercantile Trust Company, No. 120 Broadway, in the City of New York.

Alexander & Green, No. 120 Broadway, in the City of New York.

W. W. Green, No. 120 Broadway, in the City of New York.

The Union Trust Company, No. 80 Broadway, in the City of New York.

Wheeler H. Peckham, No. 80 Broadway, in the City of New York.

J. Pierpont Morgan, corner of Wall and Broad streets, in the City of New York.

Edward F. Atkins, of Boston, Massachusetts.

Seward, Guthrie, Morawetz & Steele, of No. 31 Nassau street, in the City of New York.

Wharton & Baird, of the New York Life Building, in the City of Omaha, Nebraska.

The Central Trust Company, No. 54 Wall street, in the city of New York.

Butler, Stillman & Hubbard, No. 54 Wall street, in the city of New York.

Adrian H. Joline, No. 54 Wall street, in the city of New York.

S. H. H. Clark, of St. Louis, Missouri.

Oliver W. Mink, Ames Building, Boston, Massachusetts.

E. Ellery Anderson, No. 27 Williams street, in the city of New York.

Frederic R. Coudert, No. 100 Broadway, in the city of New York.

John W. Doane, No. 45 Wabash avenue, Chicago, Illinois.

The Receivers of the Union Pacific Railway Company, No. 27 Williams street, in the city of New York and of the Ames Building, Boston, Massachusetts.

W. R. Kelly, Union Pacific Building, Omaha, Nebraska.

The Union Pacific Railway Company, having its principal places of business in the said cities of Omaha, Nebraska, and Boston, Massachusetts.

Oliver Ames, Second, and Samuel Carr, Executors, etc., Ames Building, Boston, Massachusetts.

Harwood & Ames, Lincoln, Nebraska.

Oliver Ames, Second, Ames Building, Boston, Massachusetts.

F. Gordon Dexter, Boston, Massachusetts.

Joseph McKenna, Attorney-General of the United States, Washington, District of Columbia.

Judson Harmon, Cincinnati, Ohio.

George Hoadly, No. 22 Williams street, in the City of New York.

John C. Cowin, Ware Block, corner of 15th and Farnam streets, in the City of Omaha, Nebraska.

Louis Fitzgerald, No. 120 Broadway, in the City of New York.

Chauncey M. Depew, Grand Central Station, in the City of New York.

Marvin Hughitt, No. 22 Fifth Avenue, Chicago, Illinois.

T. Jefferson Coolidge, Jr., Ames Building, Boston, Massachusetts.

The Reorganization Committee of the Union Pacific Railway Company, in care of Alvin W. Krech, Secretary, No. 120 Broadway, in the City of New York.

Kuhn, Loeb & Company, No. 27 Pine street, in the City of New York.

Collis P. Huntington, ot the City of New York.

a copy of said petition and of this order thereon, by registered mail, postpaid, at least twenty days before said twentieth day of May.

St. Paul, April 28, 1897.

WALTER H. SANBORN,
Circuit Judge.

12022

EXHIBIT.

54TH CONGRESS, 2d Session. } SENATE. { DOCUMENT No. 83.

AGREEMENT WITH REORGANIZATION COMMITTEE, UNION PACIFIC RAILROAD.

JANUARY 25, 1897.—Referred to the Committee on Pacific Railroads and ordered to be printed.

The VICE-PRESIDENT presented the following

LETTER FROM THE ATTORNEY GENERAL, IN RESPONSE TO SENATE RESOLUTION OF JANUARY 23, RELATIVE TO AGREEMENT MADE WITH WHAT IS COMMONLY KNOWN AS THE REORGANIZATION COMMITTEE OF THE UNION PACIFIC RAILROAD COMPANY RESPECTING THE FORECLOSURE OF THE GOVERNMENT LIEN ON THE PROPERTY OF SAID COMPANY, AND CORRESPONDENCE IN CONNECTION THEREWITH.

DEPARTMENT OF JUSTICE,
Washington, D. C., January 23, 1897.

SIR: I have the honor, pursuant to the Senate resolution of this date, to say that an agreement has been made with what is commonly known as the Reorganization Committee of the Union Pacific Railway Company respecting the foreclosure of the Government lien on property of said company. I transmit herewith a copy of the letter of the President of the United States under authority of which the agreement was made and foreclosure proceedings have been commenced, and copies of the correspondence which embodies the agreement.

The names of the gentlemen who comprise the reorganization committee are as follows: Louis Fitzgerald, chairman; Jacob H. Schiff, T. Jefferson Coolidge, jr., Chauncey M. Depew, Marvin Hughitt, Oliver Ames, 2d.

These papers set forth all the information called for by the resolution.

After the closing of the agreement I designated the United States Trust Company of New York as the depositary, and thereupon, upon the 21st instant, the sum of $4,500,000 was deposited therein in conformity with the terms of the agreement. The certificate representing such deposit is now in the hands of the Secretary of the Treasury.

I have the honor to be, with great respect, your obedient servant,

JUDSON HARMON,
Attorney-General.

The President of the Senate.

EXECUTIVE MANSION,
Washington, January 12, 1897.

DEAR SIR: The bill which has been for some time pending before the Congress, providing for the adjustment and extension of the indebtedness of the Pacific railroads to the Government of the United States, has been defeated in the House of Representatives.

In the case of the Union Pacific Railroad and the Kansas Pacific Railroad, a default in the payment of their indebtedness having occurred, and suits having been commenced for the foreclosure of the lien upon said roads which is paramount to the lien and security of the United States, you are hereby directed, pursuant to the provisions of an act of Congress passed March 3, 1887, after taking such precautions and perfecting such arrangements as are possible to assure as far as practicable the payment of their indebtedness to the Government as a result of the suits now pending or others to be instituted, to take such proceedings in the courts as shall be needful to protect and defend the rights and interests of the United States in respect of such indebtedness, and to take steps to foreclose the mortgages or liens of the United States upon the property of these railroad companies.

In the case of the other aided Pacific railroads as to which no foreclosure suits are pending, a different situation is presented, which requires further consideration before deciding the course to be taken by the Government. Yours, truly,

GROVER CLEVELAND.

Hon. JUDSON HARMON,
Attorney-General of the United States.

DEPARTMENT OF JUSTICE,
WASHINGTON, D. C., JANUARY 18, 1897.

SIR: Hon. George Hoadly, special assistant to the Attorney-General, has sent me your letter to him of the 15th instant, making a proposition on behalf of your committee for a guaranteed minimum bid for the property of the Union Pacific and Kansas Pacific railway companies and the Union Pacific sinking fund as a basis for the Government's proceeding to foreclose its lien thereon. I am authorized by the President to commence foreclosure proceedings, as suggested in your proposal, provided it is modified in the following particulars:

(1) In order to preserve the basis of the original informal negotiations, which took place in the absence of an accurate statement of the sinking fund, your offer should be modified so that the amount of the guaranteed bid therein named will be $45,754,059.99, instead of the sum of $45,000,000.

(2) That the following clause of your proposal be eliminated, viz: "and that, to the extent to which the Government may determine the terms of decree, an equal deposit to be made within a reasonable time before sale shall be required as a qualification of any other bidder." While I have no doubt that the court will follow the uniform practice in railway foreclosures of requiring a deposit of all bidders as a guarantee of good faith and security for performance, and while the Government will obviously have the same interest as other parties in having such condition imposed. I do not wish to make a stipulation on that point as a condition of our arrangement.

(3) That your proposal is understood to mean that in case the property mentioned should not be sold as a unit, minimum bids for the separate portions thereof are to be made which in the aggregate will produce to the Government the net sum above mentioned. In case of separate sales the deposit named by you may of course be used for qualification of bidders representing you at each, in such proportions as may be required under the terms of sale.

(4) Your guaranty applies to such sale or sales as shall become effective. The sale of the sinking fund may be judicial or otherwise.

Your acceptance of the above modifications of your proposal will close the arrangement, and I will proceed to institute foreclosure proceedings on behalf of the Government as soon as the deposit named by

you is made, for which, upon receipt of your acceptance, I will designate the depositary.

Very respectfully,

_____ _____,
Attorney General.

LOUIS FITZGERALD, Esq.,
Chairman Reorganization Committee,
Union Pacific Railway Company,
No. 120 Broadway, New York, N. Y.

REORGANIZATION COMMITTEE,
UNION PACIFIC RAILWAY COMPANY,
New York, January, 20, 1897.

Sir: I have your favor of 18th instant, written in reply to my letter of the 15th instant to Hon. George Hoadly, special assistant to the Attorney-General.

On behalf of the reorganization committee of the Union Pacific Railway Company, I have the honor to accept the modifications proposed in your letter of January 18, 1897, to the proposal made in my letter to Hon. George Hoadly dated on the 15th instant.

I am very respectfully,
LOUIS FITZGERALD,
Chairman Union Pacific Reorganization Committee.

HON. JUDSON HARMON,
Attorney-General, Washington, D. C.

NEW YORK, January 15, 1897.

DEAR SIR: Replying, on behalf of the Union Pacific Reorganization Committee, to your favor of the 14th instant, in which you request from this Committee such proposition as it may be willing to make fixing a guaranteed bid at foreclosure and sale for the interest of the United States in the Union Pacific Railway and for the Union Pacific sinking fund, I am authorized to submit to you, and through you to the Executive Department of the Government, the following:

In the event that the Government shall at once take proceedings in the pending foreclosure suits, or by independent bills, for the enforcement of its lien upon the railroad and property of the Union Pacific Railway (which includes the Kansas Pacific line) by sale thereof, and for the sale of the sinking fund in the hands of the Secretary of the Treasury relating to the Union Pacific Railway Company, the Reorganization Committee is prepared to guarantee a minimum bid for the Union and Kansas Pacific lines of railroad and property embraced within the lien of the Government and for the cash and securities in the United States Union Pacific sinking fund, taken at par, which shall produce to the Government, over and above any prior liens and charges upon the railways and sinking fund, the net sum of $45,000,000.

The Committee is prepared to furnish adequate security for the due performance of the above offer. As such security it will deposit with such national depositary in New York city as may be selected by the proper officers of the Government the sum of $4,500,000 in cash (namely, 10 per cent. of the guaranteed bid), subject to the condition that this deposit may be used, under the terms of the foreclosure decree, as a deposit to qualify such bidders as may act on behalf of the Reorganization Committee, and that to the extent to which the Government may determine the terms of decree, an equal deposit, to be made within a reasonable time before sale, shall be required as a qualification of any other bidder. Should the Government desire to liquidate the sinking fund in advance of sale of the railway property the Reorganization Committee will be prepared to anticipate this feature of

its offer by an earlier purchase of the sinking fund at par of the cash and securities therein contained.

As the provision proposed is one of very considerable magnitude and as the proposition is based upon conditions which now exist, it will be obvious that the reorganization committee must reserve, and it desires to be understood as reserving, the right to withdraw this offer at any time previous to its acceptance by the Government.

I have the honor to be, very respectfully, yours,

LOUIS FITZGERALD,
Chairman of the Reorganization Committee
of the Union Pacific Railway Company.

HON. GEORGE HOADLY,
Special Assistant to Attorney-General,
No. 22 Williams street, New York City.

159 United States Circuit Court, District of Nebraska. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
UNION PACIFIC RAILWAY COMPANY ET AL., Defendants. } No. 157 S. In Equity.

F. GORDON DEXTER and OLIVER AMES, Second, Trustees, Complainant-,
vs.
UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 48 R. In Equity.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *et als.*, Complainants,
vs.
UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 94 Q. In Equity.

Amendments to Petition of Credits Commutation Company for Leave to Intervene in the Above-entitled Causes.

160 To the honorable judges of the circuit court of the United States for the district of Nebraska:

The Credits Commutation Company respectfully asks leave to amend its petition for leave to intervene in the above-entitled causes herein heretofore filed in the following respects, to wit:

First. By inserting in the first line of the second paragraph on page 2, after the word "of," the following:

"The Combination Bridge Company which has recently completed."

Second. By adding at the bottom of page 3 the following:

"Said combination bridge was built for the purpose, among others, of securing connection with the Union Pacific railroad as herein sought; and to that end received a vote of public aid from the city of Sioux City in the sum of about $300,000, and in the articles of incorporation of the aforesaid Combination Bridge Company, said company is empowered to construct, own and operate railways in the States of Iowa and Nebraska; and your petitioner brings this petition in behalf of said bridge company, as well as itself, and purposes and intends to amend in so far as may be necessary, if at all, its own articles of association so as to enable it to incorporate or cause to be incorporated such railroad company or companies as may be necessary to construct, operate and maintain such connecting railroads from its properties aforesaid with the Union Pacific railroad as may be secured to your petitioner in pursuance of this intervention."

Third. By inserting after the word "company" in the third line on page 4, the following:

"and of eleven of the shares of the capital stock of the said com-

pany, (neither said bond nor stock being a party to nor as-
161 senting to any reorganization or sale herein referred to)."

Fourth. By striking out all of paragraph 30 on page 20.

Fifth. By striking out, on page 27, all of paragraph 44 commencing "and your petitioner shows," etc.

Sixth. By striking out in the 8th line of paragraph 47 on page 28, the words "it is not," and by changing the semicolon in the fourth line thereof to a comma.

Seventh. By striking out the word "whatever" in the 9th line of paragraph 47 on page 28, and inserting in lieu thereof the word "whenever."

Eighth. By striking out the words "did not" in the 10th line on page 33, and inserting after the word "act" in the same line, the words "none of."

Ninth. By striking out the word "became" in the 4th line of paragraph 60 on page 33, and inserting in lieu thereof the words "may have become."

Tenth. By adding after the end of the 3rd line on page 37, the following:

"And that all creditors will be held chargeable with knowledge of that fact."

Eleventh. By striking out the words "is also" in the 16th line on page 38, and inserting in lieu thereof the words "was in fact."

Twelfth. By inserting immediately before the words "by said companies" in the 6th line of paragraph 74 on page 43, the words, "for sinking-fund purposes," and by striking out the word "its" in the 8th line of said paragraph and inserting in lieu thereof the word "their."

Thirteenth. By striking out the word "not" in the last line of paragraph 84 on page 48.

162 Fourteenth. By inserting at the beginning of paragraph 88 and before the word "your," the following:

"But, if there may be any lawful foreclosure sale."

Fifteenth. By striking out the first word on page 56 and inserting in lieu thereof the word "asks."

Sixteenth. By inserting immediately before the word "authorize" in the 5th line from the bottom on page 65, the words "and could not."

CREDITS COMMUTATION COMPANY,
By JOHN C. COOMBS,
HENRY J. TAYLOR,
Its Solicitors.

Of counsel:
JOHN C. COOMBS,
25 *Equitable Building, Boston, Mass.*
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed May 22, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on said 22nd day of May, 1897, petition of Combination Bridge Company for leave to intervene was filed in said case, which said petition is in words and figures following, to wit:

163 United States Circuit Court, District of Nebraska. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
UNION PACIFIC RAILWAY COMPANY ET AL., Defendants. } No. 157 S. In Equity.

F. GORDON DEXTER and OLIVER AMES, Second, Trustees, Complainants,
vs.
UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 48 R. In Equity.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *et als.*, Complainants,
vs.
UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants. } No. 94 Q. In Equity.

Petition of Combination Bridge Company for Leave to Intervene in the Above-entitled Causes.

To the honorable judges of the circuit court of the United States for the district of Nebraska:

Your petitioner, The Combination Bridge Company, a corporation duly created and organized under the laws of the State of
164 Iowa, having filed with the secretary of the State of Nebraska a true copy of its charter or articles of association and a certified copy of the resolution adopted by its board of directors accepting the provisions of the Nebraska law making foreign corporations domestic, and duly becoming a body corporate also of the State of Nebraska, respectfully prays this honorable court to be permitted to intervene on its own behalf in the above-entitled causes, but in subordination to the intervention of the Credits Commutation Company therein, and especially to intervene should the prayer of the Credits Commutation Company therein on its own behalf be not allowed, or should this petitioner, by reason of standing or otherwise, be found the better entitled so to do, by reason of having built a railroad bridge over the Missouri river from Sioux City, Iowa, to Nebraska, under corporate authority, and with the purpose of securing, as a continuation thereof, railroad connection with the Union Pacific railroad under rights and privileges of existing laws of the United States, or for any other reason.

Your petitioner, on behalf of itself, reaffirms and realleges herein all the statements and allegations made by the Credits Commutation

Company in its petition as amended herein to intervene, as completely as therein stated and with the same force and effect as if herein fully set forth, including all the prayers thereof.

COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
HENRY J. TAYLOR,
Its Solicitors.

Of counsel:
JOHN C. COOMBS,
25 *Equitable Building, Boston, Mass.*
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed May 22, 1897. Oscar B. Hillis, clerk.

165 Thereupon afterwards, to wit, upon the said 22nd day of May, 1897, an order was entered in said cause, and filed May 24th, 1897; which said order is in the words and figures following, to wit:

United States Circuit Court, District of Nebraska. In Equity.

UNITED STATES OF AMERICA, Complainant,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

OLIVER AMES, 2ND, and SAMUEL CARR, Executors, etc., *et al.*, Complainants,
vs.
THE UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.

And now this cause coming on to be heard on the petition of the Credits Commutation Company for leave to intervene in the above-entitled causes, and also upon the amendments to said petition presented on the hearing and taken as part of said petition, and also upon the supporting petition of the Combination Bridge Company, also presented to the court on said hearing, and upon the order of this court made on April 28, 1897, upon the said petition of the Credits Commutation Company; and it appearing to the court here that the several parties had been notified of the time and place of said hearing as specified and required by the said order of this court, and there appearing upon this hearing for The Credits Commutation Company and for The Combination Bridge Company, petitioners, Mr. John C. Coombs and Mr. Henry J. Taylor, for the Union Pacific Railway Company, and S. H. H. Clark, Oliver W.

Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert, receivers thereof, Mr. John F. Dillon and Mr. W. R. Kelly, for F. Gordon Dexter and Oliver Ames, 2nd, trustees, Mr. Winslow S. Pierce, and for the United States of America, Mr. George Hoadly and Mr. John C. Cowin, and now the court having heard arguments of counsel and being fully advised in the premises, it is—

Ordered, that the prayers of the petitioners for leave to intervene herein be and the same are hereby denied, not as matter of discretion, but because said petitions do not state facts sufficient to show that the petitioners or either of them have a legal right to in-
166 tervene, and upon prayer of the petitioners an appeal to the circuit court of appeals is hereby allowed. The bond on such appeal is fixed at the sum of one thousand dollars.

Dexter and Ames, trustees, complainants and the United States of America, the Union Pacific Railway Company, and the said receivers by their respective counsel duly excepting to such part of this order as grants an appeal.

WALTER H. SANBORN,
Circuit Judge.

May 22, 1897.

Indorsed: Filed May 24, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on June 28th, 1897, petition for appeal was filed in said case; which said petition is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors of the Last Will and Testament of Frederick L. Ames, Deceased, and Peter B. Wyckoff and Edwin F. Atkins, Complainants,

vs.

THE UNION PACIFIC RAILWAY COMPANY, THE ATCHison, Colorado & Pacific Railway Company, The Atchison, Jewell County & Western Railway Company, The Boulder Valley & Central City Wagon Road Company, The Bozeman Coal Company, The Callaway Improvement Company, The Carbon Cut Off Railway Company, The Central Branch Union Pacific Railroad Company, The Denver, Leadville & Gunnison Railway Company, The Green River Water Works Company, The Junction City & Fort Kearney Railway Company, The Kansas Central Railroad Company, The Kansas City & Omaha Railroad Company, The Kearney & Black Hills Railway Company, The Laramie, North Park & Pacific Railroad & Telegraph Company, The Lawrence & Emporia Railway Company, The Loveland Pass Mining & Railroad Tunnel Company, The Montana Railway Company, The Morrison Stone, Lime & Town Company, The Omaha & Republican Valley Railway Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The St. Joseph & Grand Island Railroad Company, The Salina & Southwestern Railway Company, The Solomon Railroad Company, The Union Land Company, The Union Pacific, Denver & Gulf Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Union Pacific Coal Company, The Cascade Railroad Company, The Columbia &
167 Palouse Railroad Company, The Mill Creek Flume & Manufacturing Company, The Oregon Railway Extensions Company, The Walla Walla & Columbia River Railroad Company, The Washington & Idaho Railroad Company, The Wood River Improvement Company, The Echo & Park City Railway Company, The Rattlesnake Creek Water Company, and The Boise City Railway & Terminal Company, American Loan & Trust Co., Defendants.

No. 49 "Q." In Equity.

In the Matter of the Petitions of the CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY for Leave to Intervene Herein.

Petition for Appeal.

To the honorable circuit court of the United States for the district of Nebraska:

Your petitioners, The Credits Commutation Company and The Combination Bridge Company, petitioners for leave to intervene in the above-entitled cause, each for itself, would respectfully represent and show that in the above-entitled cause, pending in the United States circuit court in and for the district of Nebraska, there was entered at the May term, 1897, under date May 22, 1897, in said court, a final order or decree, greatly to the prejudice of your petitioners, which said order or decree is erroneous and inequitable in many respects.

Wherefore, in order that your petitioners may obtain relief in the premises, and have opportunity to show the errors complained of, your petitioners severally and each for itself prays that it may be allowed an appeal in this case to the United States circuit court of appeals for the eighth circuit, and that the proper orders touching security required of them may be made.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.,
HENRY J. TAYLOR,
Sioux City, Iowa,
Solicitors and Counsel for Credits Commutation Company and Combination Bridge Company.

Of counsel:
JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed June 28, 1897. Oscar B. Hillis, clerk.

168 Thereupon afterwards, to wit, on said 28th day of June, 1897, assignment of errors was filed in said case; which said assignments of error are in words and figures following, to wit:

In the United States Circuit Court for the District of Nebraska.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors of the Last Will and Testament of Frederick L. Ames, Deceased, and Peter B. Wyckoff and Edwin F. Atkins, Complainants,

v.

THE UNION PACIFIC RAILWAY COMPANY, THE Atchison, Colorado & Pacific Railway Company, The Atchison, Jewell County & Western Railway Company, The Boulder Valley & Central City Wagon Road Company, The Bozeman Coal Company, The Callaway Improvement Company, The Carbon Cut Off Railway Company, The Central Branch Union Pacific Railroad Company, The Denver, Leadville & Gunnison Railway Company, The Green River Water Works Company, The Junction City & Fort Kearney Railway Company, The Kansas Central Railroad Company, The Kansas City & Omaha Railroad Company, The Kearney & Black Hills Railway Company, The Laramie, North Park & Pacific Railroad & Telegraph Company, The Lawrence & Emporia Railway Company, The Loveland Pass Mining & Railroad Tunnel Company, The Montana Railway Company, The Morrison Stone, Lime & Town Company, The Omaha & Republican Valley Railway Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The St. Joseph & Grand Island Railroad Company, The Salina & Southwestern Railway Company, The Solomon Railroad Company, The Union Land Company, The Union Pacific, Denver & Gulf Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Union Pacific Coal Company, The Cascade Railroad Company, The Columbia & Palouse Railroad Company, The Mill Creek Flume & Manufacturing Company, The Oregon Railway Extensions Company, The Walla Walla & Columbia River Railroad Company, The Washington & Idaho Railroad Company, The Wood River Improvement Company, The Echo & Park City Railway Company, The Rattlesnake Creek Water Company, and The Boise City Railway & Terminal Company, American Loan & Trust Co., Defendants.

No. 94 "Q." In Equity.

In the Matter of the Petitions of the CREDITS COMMUTATION COMPANY and COMBINATION BRIDGE COMPANY for Leave to Intervene herein.

169 *Assignment of Errors on Appeal Severally in Behalf of The Cred its Commutation Company and The Combination Bridge Company, Appellants.*

On the 28th day of June, A. D. 1897, come the undersigned, Credits Commutation Company, and Combination Bridge Company, appellants, by John C. Coombs and Henry J. Taylor, their solicitors and counsel, and each severally and separately for itself, says that the decree in said cause is erroneous and against the just rights of each of these appellants, and there is manifest error therein for the following reasons:

1. Because the court erred in denying the petitions of said Credits Commutation Company and said Combination Bridge Company, for leave to intervene herein.

2. Because the court erred in decreeing that the petitions of said Credits Commutation Company and Combination Bridge Company, do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

3. Because the court erred in not granting the petition of the Credits Commutation Company for leave to intervene herein.

4. Because the court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

5. Because the court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

6. Because the court erred in denying the petition of the Combination Bridge Company for leave to intervene herein.

Wherefore, these appellants severally pray, each for itself, that the said decree be reversed and that the said court be ordered to enter a decree or order in accordance with the prayers of the respective pleadings of these appellants.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.,
HENRY J. TAYLOR,
Sioux City, Iowa,
Solicitors and Counsel for Intervening Petitioners.

Of counsel:
JOHN C. COOMBS,
25 Equitable Building, Boston, Mass.
HENRY J. TAYLOR,
Sioux City, Iowa.

Indorsed: Filed June 28, 1897. Oscar B. Hillis, clerk.

170 Thereupon afterwards, to wit, on the 22nd day of July, 1897, appeal bond was filed in said case; which said appeal bond is in words and figures following, to wit:

Know all men by these presents that we, the Credits Commutation Company and Combination Bridge Company, principals, and

F. L. Eaton and Henry J. Taylor, sureties, are held and firmly bound unto Oliver Ames, Second, and Samuel Carr, executors of the last will and testament of Frederick L. Ames, deceased; Peter B. Wyckoff, Edwin F. Atkins, The Union Pacific Railway Company, The Atchison, Colorado & Pacific Railway Company, The Atchison, Jewell County & Western Railway Company, The Boulder Valley & Central City Wagon Road Company, The Bozeman Coal Company, The Callaway Improvement Company, The Carbon Cut-Off Railway Company, The Central Branch Union Pacific Railroad Company, The Denver, Leadville & Gunnison Railway Company, The Green River Water Works Company, The Junction City & Fort Kearney Railway Company, The Kansas Central Railroad Company, The Kansas City & Omaha Railroad Company, The Kearney & Black Hills Railway Company, The Laramie, North Park & Pacific Railroad & Telegraph Company, The Lawrence & Emporia Railway Company, The Loveland Pass Mining & Railroad Tunnel Company, The Montana Railway Company, The Morrison Stone, Lime & Town Company, The Omaha & Republican Valley Railway Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The St. Joseph & Grand Island Railroad Company, The Salina & Southwestern Railway Company, The Solomon Railroad Company, The Union Land Company, The Union Pacific, Denver & Gulf Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Union Pacific Coal Company, The Cascade Railroad Company, The Columbia & Palouse Railroad Company, The Mill Creek Flume & Manufacturing Company, The Oregon Railway Extensions Company, The Walla Walla & Columbia River Railroad Company, The Washington & Idaho Railroad Company, The Wood River Improvement Company, The Echo & Park City Railway Company, The Rattlesnake Creek Water Company, and The Boise City Railway & Terminal Company, American Loan & Trust Co., called herein the respondents, in the full and just sum of one thousand dollars ($1,000), to be paid to the said respondents, their successors or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 28th day of June, in the year of our Lord eighteen hundred and ninety-seven.

171 Whereas lately, at the May term, 1897, of the circuit court of the United States for the district of Nebraska, in a suit pending in said court between the said respondents and the said Credits Commutation Company and said Combination Bridge Company, petitioners, for leave to intervene therein, a decree or order was rendered against said Credits Commutation Company and Combination Bridge Company, petitioners, and the said named petitioners have obtained a writ of appeal of the said court to reverse the said order or decree in the aforesaid suit, and a citation directed to the said respondents, citing and admonishing them to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation:

Now, the condition of the above obligation is such that if the said Credits Commutation Company and Combination Bridge Company shall prosecute said appeal to effect and answer all costs if they fail to make good their plea, then the above obligation, which is only a bond for costs and not a supersedeas bond, to be void; else to remain in full force and virtue.

CREDITS COMMUTATION COMPANY, [SEAL.]
By F. L. EATON,
Secretary and General Manager, Principal.
COMBINATION BRIDGE COMPANY, [SEAL.]
By F. L. EATON, *Secretary, Principal.*
F. L. EATON, *Surety.* [SEAL.]
HENRY J. TAYLOR, *Surety.* [SEAL.]

Signed and delivered in the presence of—
E. A. BURGESS.

STATE OF IOWA, *Woodbury County,* } ss:

F. L. Eaton and Henry J. Taylor, sureties on the within and foregoing bond, being duly sworn, each for himself severally deposes and says that he is worth, after paying his just debts, more than one thousand dollars, exclusive of property exempt from *taxa*tion by the laws of the State in which he resides.

F. L. EATON.
HENRY J. TAYLOR.

Subscribed and sworn to before me by the above-named F. L. Eaton and Henry J. Taylor, this 28th day of June, A. D. 1897.

[SEAL.] E. A. BURGESS,
Notary Public within and for Woodbury County, State of Iowa.

172 The foregoing bond is approved this 22nd day of July A. D. 1897.

W. H. MUNGER,
District Judge.

Approved July 29, 1897.
WALTER H. SANBORN,
Circuit Judge.

Indorsed: Filed July 22, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 29th day of July, 1897, the following order was signed and filed in said case; which said order is in words and figures following, to wit:

In the Circuit Court of the United States for the District of Nebraska.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *et al.*, Complainants,
vs.
UNION PACIFIC RAILWAY COMPANY ET AL., Defendants.
} No. 94 "Q." In Equity.

CREDITS COMMUTATION COMPANY and COMBINATION BRIDGE COMPANY, Intervening Petitioners,
v.
UNION PACIFIC RAILWAY COMPANY and All Other Parties to This Suit, Respondents.

And now, on this 29 day of July, 1897, the above cause came on upon the hearing of the petitions of the Credits Commutation Company and the Combination Bridge Company, for the allowance of appeals herein from the order or decree entered herein at the May term, 1897, under date May 22, 1897, denying said parties leave to intervene herein, and in open court, and at the same term thereof at which said order or decree complained of was so entered and rendered by this court, said appeals are hereby allowed, and security for costs fixed at one thousand dollars, and bond therefor on file is approved.

WALTER H. SANBORN, *Judge.*

Indorsed: Filed July 25, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 29th day of July, 1897, a citation was duly issued in said case, and returned and filed on said 29th day of July, 1897, the following of which is the original:

173 United States of America to Oliver Ames, Second, and Samuel Carr, executors of the last will and testament of Frederick L. Ames, deceased; Peter B. Wyckoff and Edwin F. Atkins; the Union Pacific Railway Company, the Atchison, Colorado & Pacific Railway Company, the Atchison, Jewell County & Western Railway Company, the Boulder Valley & Central City Wagon Road Company, the Bozeman Coal Company, the Callaway Improvement Company, the Carbon Cut Off Railway Company, the Central Branch Union Pacific Railroad Company, the Denver, Leadville & Gunnison Railway Company, the Green River Water Works Company, the Junction City & Fort Kearney Railway Company, the Kansas Central Railroad Company, the Kansas City & Omaha Railroad Company, the Kearney & Black Hills Railway Company, the Laramie, North Park & Pacific Railroad & Telegraph Company, the Lawrence & Emporia Railway Company, the Loveland Pass Mining & Railroad Tunnel Company, the Montana Railway Company, the Morrison Stone, Lime &

Town Company, the Omaha & Republican Valley Railway Company, the Oregon Railway & Navigation Company, the Oregon Short Line & Utah Northern Railway Company, the St. Joseph & Grand Island Railroad Company, the Salina & Southwestern Railway Company, the Solomon Railroad Company, the Union Land Company, the Union Pacific, Denver & Gulf Railway Company, the Union Pacific, Lincoln & Colorado Railway Company, the Union Pacific Coal Company, the Cascade Railroad Company, the Columbia & Palouse Railroad Company, the Mill Creek Flume & Manufacturing Company, the Oregon Railway Extensions Company, the Walla Walla & Columbia River Railroad Company, the Washington & Idaho Railroad Company, the Wood River Improvement Company, the Echo & Park City Railway Company, the Rattlesnake Creek Water Company, the Boise City Railway & Terminal Company, and the American Loan & Trust Company, Greeting:

You are hereby cited and admonished to be and appear in the United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to an appeal filed in the office of the circuit court of the United States for the district of Nebraska, wherein The Credits Commutation Company and The Combination Bridge Company are appellants, and you are appellees, to show cause, if any there be, why the order or decree rendered against the said
174 appellants as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Seal United States Circuit Court, District of Nebraska.

Witness the Honorable Walter H. Sanborn, judge of the circuit court of the United States for the district of Nebraska, this 29 day of July, in the year of our Lord, eighteen hundred and ninety-seven.

WALTER H. SANBORN,
Circuit Judge.

U. S. circuit court, district of Nebraska. 94 Q. In equity. Oliver Ames, Second, *et al. v.* Union Pacific R'y Co. *et al.* Citation. Filed Jul- 29, 1897. Oscar B. Hillis, clerk.

Thereupon, afterwards, to wit, on the 21st day of August, 1897, acceptance of service of citation by Winslow S. Pierce, sol. for Dexter and Ames, trustees, was filed in said case; which said acceptance is in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." Equity.	In
F. GORDON DEXTER and OLIVER AMES, SECOND, *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." Equity.	In
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." Equity.	In

Personal service of the citation on appeal on behalf of the Credits Commutation Company and the Combination Bridge Company, signed by Judge Sanborn, and filed in the above-entitled causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 13th, A. D. 1897.

WINSLOW S. PIERCE,
Sol'r for Dexter and Ames, Trustees.

Indorsed: Filed Aug. 21, 1897. Oscar B. Hillis, clerk.

Thereupon, afterwards, to wit, on said 21st day of August, 1897, acceptance of service of citation by Geo. Hoadly, sp'l ass't to att'y general, was filed in said case; which said acceptance is in
175 words and figures following, to wit:

United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." Equity.	In
F. GORDON DEXTER and OLIVER AMES, SECOND, *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." Equity.	In
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." Equity.	In

Personal service of the citation on appeal on behalf of the Credits Commutation Company and the Combination Bridge Company, signed by Judge Sanborn, and filed in the above-entitled causes,

on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 16, A. D. 1897.

GEO. HOADLY,
Special Assistant to the Attorney General in Union Pacific Matters.

Indorsed: Filed Aug. 21st, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the said 21st day of August, 1897, acceptance of service of citation by John C. Cowin, special counsel for the United States, was filed in said case, which said acceptance is in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA *vs.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." Equity.	In
F. GORDON DEXTER and OLIVER AMES, SECOND, *vs.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." Equity.	In
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *vs.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." Equity.	In

Personal service upon me of the citation on appeal on behalf of the Credits Commutation Company and the Combination Bridge Company, signed by Judge Sanborn, and filed in the above-
176 entitled causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 12th, A. D. 1897.

JOHN C. COWIN,
Special Counsel for United States.

Indorsed: Filed Aug. 21, 1897. Oscar B. Hillis, clerk.

Thereupon afterwards, to wit, on the 23rd day of August, 1897, acceptance of service of citation by W. R. Kelly, sol'r for U. P. R'y Co., and receivers, was filed in said case, which said acceptance is in words and figures following, to wit:

United States Circuit Court, District of Nebraska.

UNITED STATES OF AMERICA *vs.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 157 "S." Equity.	In
F. GORDON DEXTER and OLIVER AMES, SECOND, *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 48 "R." Equity.	In
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *v.* UNION PACIFIC RAILWAY COMPANY ET AL.	No. 94 "Q." Equity.	In

Personal service upon me of the citation of appeal on behalf of the Credits Commutation Company and the Combination Bridge Company, signed by Judge Sanborn, and filed in the above-entitled causes, on the 29th day of July, A. D. 1897, is hereby admitted, and the receipt of a copy of said citation is hereby acknowledged.

Dated August 21st, A. D. 1897.

W. R. KELLY,

Counsel for Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

Indorsed: Filed Aug. 23, 1897. Oscar B. Hillis, clerk.

UNITED STATES OF AMERICA, *District of Nebraska,* } *ss:*

I, Oscar B. Hillis, clerk of the circuit court of the United States for the district of Nebraska, do hereby certify that the foregoing folios from one (1) to two hundred and thirteen (213), inclusive, contain true and faithful transcripts of all the pleadings, process and proceedings of record and on file in said court, in the matter of the petition of Credits Commutation Company and Combination Bridge Company for leave to intervene, filed in the case of Oliver
177 Ames, Second, *et al., vs.* The Union Pacific Railway Company *et al.*, and that a copy of the citation, duly certified, has been lodged and remains in my office as such clerk.

Seal United States Circuit Court, District of Nebraska.

Witness my hand and the seal of said circuit court at Omaha in said district, this 30th day of August, A. D. 1897.

OSCAR B. HILLIS, *Clerk,*
By R. R. BITTINGER,
Deputy Clerk.

Filed Sep. 9, 1897. John D. Jordan, clerk.

178 And on the ninth day of September, A. D. 1897, an appearance of counsel for the appellants was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

CREDITS COMMUTATION CO. ET AL., Appellants,
vs.
OLIVER AMES, SECOND, ET AL. } No. 997.

The clerk will enter *my* appearance as counsel for the appellants.

JOHN C. COOMBS,
25 *Equitable Bldg., Boston, Mass.*
HENRY J. TAYLOR,
Sioux City, Iowa.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1897. No. 997. Credits Commutation Company *et al.*, appellants, *vs.* Oliver Ames, Second, *et al.* Appearance. Filed Sep. 9, 1897. John D. Jordan, clerk. John C. Coombs, Henry J. Taylor, counsel for appellants.

And on the eighteenth day of October, A. D. 1897, an appearance of Mr. George Hoadly, counsel for appellee The United States was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

CREDITS COMMUTATION CO. ET AL., Appellants,
vs.
OLIVER AMES, SECOND, ET AL. } No. 997.

The clerk will enter my appearance as counsel for The United States of America, appellee.

GEO. HOADLY.

Endorsed: U. S. circuit court of appeals, eighth circuit, May
179 term, 1897. No. 997. Credits Commutation Co. *et al.*, appellants, *vs.* Oliver Ames, Second, *et al.* Appearance. Filed Oct. 18, 1897. John D. Jordan, clerk. George Hoadly, counsel for appellee The United States.

And on the eleventh day of November, A. D. 1897, an appearance of Mr. John C. Cowin, counsel for the United States, was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1897.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
OLIVER AMES, SECOND, ET AL. } No. 997.

The clerk will enter my appearance as counsel for the appellee The United States of America.

JOHN C. COWIN,
Special Counsel for the United States.

Endorsed: U. S. circuit court of appeals, eighth circuit, May term, 1897. No. 997. Credits Commutation Co. *et al.*, appellants, *vs.* Oliver Ames, Second, *et al.* Appearance. Filed Nov. 11, 1897. John D. Jordan, clerk. John C. Cowin, Omaha, Neb., counsel for appellee.

And on the fifth day of January, A. D. 1898, an appearance of Messrs. John F. Dillon and W. R. Kelly, counsel for the receivers, was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1897.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
OLIVER AMES, SECOND, ET AL. } No. 997.

The clerk will enter *my* appearance as counsel for the appellees, the receivers, &c.

JNO. F. DILLON &
W. R. KELLY.

180 Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1897. No. 997. Credits Commutation Company *et al.*, appellants, *vs.* Oliver Ames, Second, *et al.* Appearance. Filed Jan. 5, 1898. John D. Jordan, clerk. John F. Dillon, W. R. Kelly, counsel for appellees, rec'rs.

And on the seventh day of December, A. D. 1898, an appearance of counsel for certain appellees was filed in the clerk's office of said circuit court of appeals in words and figures following:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

CREDITS COMMUTATION COMPANY ET AL., Appellants,
vs.
OLIVER AMES, SECOND, ET AL. } No. 997.

The clerk will enter my appearance as counsel for the appellees Union Pacific R'y Co. and receivers.

G. M. LAMBERTSON.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term, 1898. No. 997. Credits Commutation Company *et al.*, appellants, *vs.* Oliver Ames, Second, *et al.* Appearance. Filed Dec. 7, 1898. John D. Jordan, clerk. G. M. Lambertson, counsel for Union Pacific R'y Co. and receivers.

And on the thirty-first day of December, A. D. 1897, there was filed in the clerk's office of said circuit court of appeals a certain notice and motion by the Union Pacific Railway Company and receivers to dismiss in words and figures following, to wit:

181 STATE OF NEW YORK, }
City and County of New York, } ss.:

B. W. J. Fox, being duly sworn, deposes and says that he is above the age of twenty-one years and is a citizen and resident of said State.

That on the 29th day of December, 1897, he served upon the parties below named a copy of the annexed notice and motion of the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, receivers, by depositing in the United States post-office in the city of New York copies of said notice and motion, enclosed in sealed envelopes, postage fully prepaid, and addressed respectively as hereinafter shown:

John C. Coombs, Equitable building, Boston, Mass.; Henry J. Taylor, Sioux City, Iowa.

And further affiant sayeth not.

B. W. J. FOX.

Sworn to before me this 29th day of December, 1897.

[SEAL.] JOHN C. SANDERS,
Notary Public, # 8, *New York Co.*

United States Circuit Court of Appeals Eighth Circuit, December Term, 1897.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*, Appellees. } No. 996.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
182 OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., Appellees. } No. 997.

To Messrs. John C. Coombs and Henry J. Taylor, counsel for appellants:

Please take notice that on Monday, the 10th day of January, A. D. 1898, at the opening of the court, or as soon thereafter as counsel can be heard, the motion, of which the foregoing is a copy, will be submitted to the United States circuit court of appeals for the eighth circuit for the decision of the said court thereon.

JOHN F. DILLON,
WM. R. KELLY,
Counsel for the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1897.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants, *against* THE UNITED STATES OF AMERICA ET AL., Appellees. } No. 995.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants, *against* F. GORDON DEXTER and OLIVER AMES, SECOND, *et al.*, Appellees. } No. 996.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants, *against* OLIVER AMES, SECOND, and SAMUEL CARR, Executors, *et al.*, Appellees. } No. 997.

Appeals from the circuit court of the United States for the district of Nebraska.

Motion to Dismiss by the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

183 Now come the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, receivers, by John F. Dillon and W. R. Kelly, their solicitors, and move the court for orders dismissing the appeals taken in each of the above entitled cases by The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, 1891, entitled "An act to establish circuit courts of appeals and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled causes, and the court in denying such application exercised the discretionary powers, and its action cannot be reviewed by this court.

Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

THE UNION PACIFIC RAILWAY COMPANY AND
S. H. H. CLARK,
OLIVER W. MINK,
E. ELLERY ANDERSON,
FREDERIC R. COUDERT, AND
JOHN W. DOANE,
Receivers,
By JOHN F. DILLON,
WM. R. KELLY,
Their Solicitors.

184 Endorsed: U. S. circuit court of appeals, eighth circuit, December term. No. 995. The Credits Commutation Company and The Combination Bridge Company, appellants, against The United States of America *et al.*, appellees, and two other cases. Notice of motion to dismiss by the Union Pacific Railway Company, S. H. H. Clark, *et al.* Filed Dec. 31, 1897. John D. Jordan, clerk.

And on the twenty-eighth day of November, A. D. 1898, there was filed in the clerk's office of said court in said cause a certain notice and amended motion to dismiss in words and figures following, to wit:

185 United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
OLIVER AMES and SAMUEL CARR, Executors, etc., *et al.*, Appellees.
} No. 997.

To John C. Coombs, Esq., Equitable building, Boston, Mass., and to Henry J. Taylor, Esq., Sioux City, Iowa.

GENTLEMEN: Please take notice that we have filed in the circuit court of appeals for the eighth circuit, with the clerk of said court and in the proceeding above entitled, an amended and supplemental motion to dismiss the appeal therein, of which the attached is a copy. Counsel for appellees will call up said motion for hearing at 10 o'clock a. m. on Monday, December 5th, 1898, or as soon thereafter as counsel can be heard.

Dated November 25, 1898.

G. M. LAMBERTSON,
Counsel for the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, Receivers.

United States Circuit Court of Appeals for the Eighth Circuit, December Term, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,
against
OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *et al.*, Appellees.
No. 997.

Amended and Supplemental Motion to Dismiss Appeals.

Appeals from the circuit court of the United States for the district of Nebraska.

Motion to dismiss by the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, receivers.

186 Now come the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, receivers, by their counsel, and move the court for orders dismissing the appeals taken in the above entitled case by The Credits Commutation Company and The Combination Bridge Company, appellants, and for cause of motion allege:

First. Because the order of the circuit court of the United States for the district of Nebraska from which the said appeals are taken is not a final decision of the said circuit court of the United States within the meaning of section 6 of the act of Congress approved March 3, — "define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes."

Second. Because it was within the legal discretion of the circuit court of the United States for the district of Nebraska to grant or deny the application of the appellants for leave to intervene in the above-entitled causes, and the court, in denying such application, exercised the discretionary powers, and its action cannot be reviewed by this court.

Third. Because the appellants were not parties to any of said suits in which intervention was sought and in which the order appealed from was entered.

Fourth. Because the petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891, establishing the circuit courts of appeals and defining their jurisdiction.

Fifth. Because appellants did not file with the clerk of the court below a petition for the appeal and assignments of errors, as required by the eleventh rule of this court, before the appeal was allowed.

Sixth. Because appellants did not docket the said appeal and file

the record of said case with the clerk of this court as and
187 within the time prescribed by section 5 of the fourteenth rule and section 1 of the sixteenth rule of this court.

Seventh. Because the questions arising on the appeal from the denial of the application of the Credits Commutation Company and the Combination Bridge Company to intervene in the court below have become moot, forasmuch as the suit in which said intervention was sought has gone to a final decree and the *res* of the action passed from the custody of the court, and because said proposed intervention, if allowed now, would be futile and ineffective, inasmuch as no appeal has been taken from said decree and the time for appeal has elapsed, and in this behalf these appellees ask leave to exhibit certified copies of the records of the court below in the premises.

G. M. LAMBERTSON,

Counsel for the Union Pacific Railway Company; S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert, and John W. Doane, Receivers.

Endorsed: U. S. circuit court of appeals, eighth circuit, December term. No. 997. The Credits Commutation Company and The Combination Bridge Company, appellants, against Oliver Ames, Second, and Samuel Carr *et al.* Notice of and amended motion to dismiss by the Union Pacific Railway Company and S. H. H. Clark *et al.* Filed Nov. 28, 1898. John D. Jordan, clerk.

188 And on the second day of September, A. D. 1898, there was filed in the clerk's office of said circuit court of appeals a cirtificate of clerk as to time of filing assignment of errors in words and figures following, to wit:

United States Circuit Court, District of Nebraska. In Equity.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors, etc., *et al.*, Complainants, *vs.* UNION PACIFIC RAILWAY COMPANY ET ALS., Defendants.	No. 94 Q. In Equity.

Additional and Supplemental Transcript of Record to Correct Original Transcript of Record in United States Circuit Court of Appeals for Eighth Circuit.

Pleas before the Honorable Walter H. Sanborn, judge of the circuit court of the United States for the eighth judicial circuit, sitting in the circuit court of the United States for the district of Nebraska, within the said eighth judicial circuit, at the May term, A. D. 1897.

Be it remembered that on the 28th day of June, 1897, the Credits Commutation Company and Combination Bridge Company filed in said case their assignment of errors and their petition for appeal set

out in the original abstract now on file in the said United States circuit court of appeals, and said assignment of errors was filed with the clerk of this court at the same time as and with said petition for appeal.

UNITED STATES OF AMERICA, }
District of Nebraska, } ss:

I, Oscar B. Hillis, clerk of the circuit court of United States for the district of Nebraska, do hereby certify that the above contains a true and faithful statement and transcript of the time and fact of the filing in said court of the said assignment of errors and petition for appeal in the matter of the petition of Credits Commutation Company and Combination Bridge Company for leave to intervene, filed in the case of Oliver Ames, Second, and Samuel Carr, executors, etc., *et al. vs.* Union Pacific Railway ompany *et als.*

189 Witness my hand and the seal of said circuit court, at Omaha, in said district, this 30th day of November, A. D. 1898.

[SEAL.] OSCAR B. HILLIS, *Clerk.*

[Cancelled 10c. internal-revenue stamp.]

Endorsed: 997. Credits Commutation Co. *et al.*, appellants, *vs.* Oliver Ames, Second, and Samuel Carr *et al.* Certificate of clerk as to time of filing assignment of errors. Filed Dec. 2, 1898. John D. Jordan, clerk.

190 And on the seventh day of December, A. D. 1898, in the record of the proceedings of said circuit court of appeals is an order of submission of said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

WEDNESDAY, *December* 7, 1898.

CREDITS COMMUTATION COMPANY ET AL., Appellants, }
vs. } No. 997.
OLIVER AMES, SECOND, ET AL. }

Appeal from the circuit court of the United States for the district of Nebraska.

This cause having been called for hearing in its regular order, and Judge Sanborn, being disqualified, retired and took no part in the hearing.

Thereupon the several motions to dismiss filed herein were argued by Mr. G. M. Lambertson in support thereof, and by Mr. John C. Coombs in opposition thereto; whereupon the said motions were submitted to Judges Caldwell and Thayer and taken under advisement.

And on the seventh day of December, A. D. 1898, an opinion of said circuit court of appeals was filed in said cause in the following words, to wit:

191 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *vs.* THE UNITED STATES OF AMERICA ET AL., Appellees.	No. 995. Appeal from the Circuit Court of the United States for the District of Nebraska.
THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *vs.* F. GORDON DEXTER and OLIVER AMES, Second, *et al.*, Appellees.	No. 996. Appeal from the Circuit Court of the United States for the District of Nebraska.
THE CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *vs.* OLIVER AMES, SECOND, and SAMUEL Carr, Executors of the Last Will and Testament of Frederick L. Ames, Deceased, *et al.*, Appellees.	No. 997. Appeal from the Circuit Court of the United States for the District of Nebraska.

Mr. Winslow S. Pierce and Mr. G. M. Lambertson (Mr. Lawrence Greer was with them on the brief) for the motion.

Mr. John C. Coombs and Mr. Henry J. Taylor, *contra.*

Before Caldwell and Thayer, circuit judges.

Per Curiam:

These cases are before the court on the present occasion on motions to dismiss the several appeals. The appeals were taken from orders made by the Honorable Walter H. Sanborn, circuit judge, which denied the application of The Credits Commutation Company and The Combination Bridge Company, the appellants, for leave to intervene in three suits which were at the time pending in the circuit court of the United States for the district of Nebraska. One
192 of these suits was a bill filed on October 9, 1893, by Oliver Ames, Second, and Samuel Carr, executors of the last will and testament of Frederick L. Ames, deceased, *et al.*, against the Union Pacific Railway Company, *et al.*, which is commonly termed "the stockholders' suit;" the other was a bill which was filed on January 21, 1895, by F. Gordon Dexter and Oliver Ames, Second, trustees, against the Union Pacific Railway Company, *et al.*, for the

purpose of foreclosing the first mortgage on the Union Pacific railway; and the third was a bill filed on January 23, 1897, by the United States against the Union Pacific Railway Company, *et al.*, for the purpose of foreclosing its statutory lien upon the property of said railway company.

On April 28, 1897, when said cases were about ripe for a final decree, the Credits Commutation Company and the Combination Bridge Company presented an intervening petition to Judge Sanborn, and asked leave to file the same in each of said suits, and thereby become parties thereto. On the presentation of the intervening petition an order was made requiring all parties in interest in said suits to show cause, on a day specified, why the prayer of the petitioners for leave to intervene should not be granted. On the return day of said order, objections to the filing of said intervening petition having been duly made and considered, it was ordered "that the prayers of the petitioners for leave to intervene herein, be, and the same are hereby denied, not as a matter of discretion, but because said petitions do not state facts sufficient to show that the petitioners, or either of them, have a legal right to intervene." From this order which was entered at the same time and in the same form in each of the above cases the present appeals were taken.

The ground upon which the petitioners below, who are the appellants here, sought leave to intervene in the pending litigation against the Union Pacific Railway Company, was as follows:

The Credits Commutation Company alleged that it was entitled as beneficiary in a deed of assignment, to three-fourths of the capital stock of the Sioux City & Northern Railway Company, which was a railroad extending northwardly from Sioux City, Iowa, for a distance of about one hundred miles to a junction with the Great Northern railroad in the State of Minnesota; that it was also entitled to all the stock of the Sioux City, O'Neill & Western railroad, which was a road extending westwardly from Sioux City, Iowa, to O'Neill, Nebraska, a distance of about one hundred and thirty miles; that these roads were connected at Sioux City, Iowa, by a bridge across the Missouri river, whose capital stock was all owned by the Credits Commutation Company; that the petitioners proposed to extend the Sioux City, O'Neill & Western railroad to a junction with the Union Pacific railroad in the western part of the State of Nebraska; that their ultimate design was to form a line of transportation by means of the aforesaid railroad and bridge companies, and certain terminal properties in Sioux City which the petitioners then owned, and thereby promote an interchange of traffic between the head of the Great Lakes at Duluth, and the region of country lying west of the Missouri river opposite to Sioux City. They further averred in the intervening complaint that by virtue of various provisions of the act creating the Union Pacific Railway Company and the amendments thereof, particularly by sections 14 and 15 of the act of July
1, 1862, (12 Stat., 489, c. 120) and by section 17 of the act of
193 July 2, 1864, (13 Stat., 356, c. 216) * * * the right was accorded to the petitioners to form a junction with the Union Pacific railroad not farther west than the one hundredth meridian

of longitude, whenever they should have completed their proposed line of railroad through the States of Iowa *or* Minnesota to Sioux City, and thence southwestwardly to a point on the main line of the Union Pacific railroad. In view of the foregoing facts, the petitioners craved leave to intervene and be made parties to the three suits then pending against the Union Pacific Railway Company, to the end that they might, in the first place, resist and if possible prevent a foreclosure sale of the property and franchises of said railroad company under decrees made in the pending suits, or if defeated in that object, to the end that they might preserve their alleged right to connect their proposed line of railroad with the main line of the Union Pacific Railway Company, by appropriate provisions inserted in the decree of foreclosure, provided a foreclosure sale of the latter company's property and franchise should eventually be ordered.

The motion to dismiss the several appeals is grounded on the proposition that the order from which the several appeals were taken was not a final judgment or decree from which an appeal will lie to this court, and upon the further proposition that the action of the lower court in refusing leave to intervene is not reviewable on appeal, inasmuch as it rested in the sound discretion of the chancellor to admit or reject the intervention. Both of these positions are, in our opinion, well taken. The order denying leave to intervene was not final within any of the definitions usually given of a final order or decree, inasmuch as it did not dispose of the petitioners' alleged right to form a junction with the main line of the Union Pacific railroad, which was the substantial right asserted, but left them at full liberty to litigate that question by an original bill, or by any other method of procedure which they saw fit to adopt. The trial court could not, and did not, finally adjudicate any of the questions which were presented by the intervening complaint, for the reason that it refused to give the petitioners a standing in court to be heard with respect to such questions, and also refused to permit the intervening complaint to be filed and become a part of the record. None of the issues, therefore, which were tendered by the petitioners in their intervening complaint ever passed under judicial review in such a manner as to estop the petitioners from tendering like issues on any future occasion, because the trial court refused to allow such issues to be incorporated into the pending suits in such a form that they could be tried and determined. When such action is taken, that is to say, when leave to intervene in an equity case is asked and refused, the rule, so far as we are aware, is well settled that the order thus made denying leave to intervene is not regarded as a final determination of the merits of the claim on which the intervention is based, but leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding. Such orders not only lack the finality which is necessary to support an appeal, but it is usually said of them that they cannot be reviewed because they merely involve an exercise of the discretionary powers of the trial court. *Ex parte Cutting*, 94 U. S., 14; *Hamlin v. Continental Trust Company of the City of New York*, 47 U. S. App., 422, 428,

429; 78 Fed. Rep., 664; *Jones & Laughlins, Limited, v. Sands,*
194 51 U. S. App., 153, 157; 79 Fed. Rep., 913; *In re Streett, petitioner,* 8 U. S. App., 645, 650; 62 Fed. Rep., 218.

It is doubtless true that cases may arise where a denial of the right of a third party to intervene therein would be a practical denial of certain relief to which the intervener is fairly entitled, and can only obtain by an intervention. Cases of this sort are those where there is a fund in court undergoing administration, to which a third party asserts some right which will be lost in the event that he is not allowed to intervene before the fund is dissipated. In such cases an order denying leave to intervene is not discretionary with the chancellor, and will generally furnish the basis for an appeal, since it finally disposes of the intervener's claim by denying him all right to relief. The cases at bar, however, are not of that character. The petitioners were under no obligation to intervene in the litigation against the Union Pacific Railway Company to preserve their alleged right to form a junction with the road of that company when they should have completed their own road to a suitable junction point. The question which they sought to litigate in the pending litigation could, we think, with more propriety and with less difficulty, have been litigated by an independent bill, after they had completed, or were about completing their line to a suitable junction point. Prior to that time the questions which they sought to raise by means of the intervening petition were speculative questions, which the lower court, as we think, very properly refused to consider or determine.

It was suggested in argument that as the lower court saw fit to insert a clause in its order that it had not refused leave to intervene "as a matter of discretion," but because the petitioners had no legal right to intervene, therefore the motion to dismiss is not tenable, so far as it is based on the discretionary character of the order. The answer to this suggestion is that the trial court by inserting such a clause in its order explanatory thereof, could not give an effect to the order which was in any respect different from the effect which it had by virtue of the nature of the proceeding in which the order was made. The intervening petition merely invoked the discretionary power of the court, and it could exercise no other power in the premises, whatever the purpose of the court or its own declaration on the subject may have been. The fact is that the lower court simply exercised its discretionary authority in denying leave to intervene, and it did not succeed in rendering a judgment upon the merits of the petitioners' claim which will conclude them in any subsequent suit, although it may have intended to do so. As it is now well settled since the decision in *McLish v. Roff*, 141 U. S., 661, that an appeal will only lie to this court from orders or decrees which are final in their character, and which involve something more than the exercise of purely discretionary powers (except in some cases for which special provision is made by the seventh section of the act under which this court was created, 26 Stat., 826, c. 517)—it follows that the appeals cannot be entertained, and that the motions to dismiss the same must be sustained. It is so ordered.

Filed December 7, 1898.

195 And on the seventh day of December, A. D. 1898, in the record of the proceedings of said circuit court of appeals is a decree in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

WEDNESDAY, *December* 7, 1898.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants,

vs.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors of the Last Will and Testament of Frederick L. Ames, Deceased; Peter B. Wyckoff and Edwin F. Atkins, The Union Pacific Railway Company, The Atchison, Colorado & Pacific Railway Company, The Atchison, Jewell County & Western Railway Company, The Boulder Valley & Central City Wagon Road Company, The Bozeman Coal Company, The Callaway Improvement Company, The Carbon Cut Off Railway Company, The Central Branch Union Pacific Railroad Company, The Denver, Leadville & Gunnison Railway Company, The Green River Water Works Company, The Junction City & Fort Kearney Railway Company, The Kansas Central Railroad Company, The Kansas City & Omaha Railroad Company, The Kearney & Black Hills Railway Company, The Laramie, North Park & Pacific Railroad & Telegraph Company, The Lawrence & Emporia Railway Company, The Loveland Pass Mining & Railroad Tunnel Company, The Montana Railway Company, The Morrison Stone, Lime & Town Company, The Omaha & Republican Valley Railway Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The St. Joseph & Grand Island Railroad Company, The Salina & Southwestern Railway Company, The Solomon Railroad Company, The Union Land Company, The Union Pacific, Denver & Gulf Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Union Pacific Coal Company, The Cascade Railroad Company, The Columbia & Palouse Railroad Company, The Mill Creek Flume & Manufacturing Company, The Oregon Railway Extensions Company, The Walla Walla & Columbia River Railroad Company, The Washington & Idaho Railroad Company, The Wood River Improvement Company, The Echo & Park City Railway Company, The Rattlesnake Creek Water Company, The Boise City Railway & Terminal Company, and The American Loan & Trust Co. No. 997.

Appeal from the circuit court of the United States for the district of Nebraska.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Nebraska and upon the several motions and amended motions to dismiss filed by appellees and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that said motions be, and the same are hereby, sustained, and that the appeal from the said circuit court in this cause be, and the same is hereby, dismissed with costs, and that Oliver Ames, Second, and Samuel Carr, executors of the last will and testament of Frederick L. Ames, deceased; Peter B. Wyckoff and Edwin F. Atkins, The Union Pacific Railway Company, The Atchison, Colorado & Pacific Railway Company, The Atchison, Jewell County & Western Railway Company, The Boulder Valley & Central City Wagon Road Company, The Bozeman Coal Company, The Callaway Improvement Company, The Carbon Cut-Off Railway Company, The Central Branch Union Pacific Railroad Company, The Denver, Leadville & Gunnison Railway Company, The Green River Water Works Company, The Junction City & Fort Kearney Railway Company, The Kansas Central Railroad Company, The Kansas City & Omaha Railroad Company, The Kearney & Black Hills Railway Company, The Laramie, North Park & Pacific Railroad & Telegraph Company, The Lawrence & Emporia Railway Company, The Loveland Pass Mining & Railroad Tunnel Company, The Montana Railway Company, The Morrison Stone, Lime & Town Company, The Omaha & Republican Valley Railway Company, The Oregon Railway & Navigation Company, The Oregon Short Line & Utah Northern Railway Company, The St. Joseph & Grand Island Railroad Company, The Salina & Southwestern Railway Company, The Solomon Railroad Company, The Union Land Company, The Union Pacific, Denver & Gulf Railway Company, The Union Pacific, Lincoln & Colorado Railway Company, The Union Pacific Coal Company, The Cascade Railroad Company, The Columbia & Palouse Railroad Company, The Mill Creek Flume & Manufacturing Company, The Oregon Railway
197 Extensions Company, The Walla Walla & Columbia River Railroad Company, The Washington & Idaho Railroad Company, The Wood River Improvement Company, The Echo & Park City Railway Company, The Rattlesnake Creek Water Company, The Boise City Railway & Terminal Company, and The American Loan & Trust Company have and recover against the Credits Commutation Company and the Combination Bridge Company the sum of twenty dollars for their costs herein, and have execution therefor.

To which ruling, order, and decree the appellants, by their counsel, at the time duly excepted and still except.

Thereupon the appellants, in open court, prayed an appeal to the Supreme Court of the United States, which is hereby allowed.

December 7, 1898.

198 And on the twentieth day of February, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals in said cause a petition for appeal in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and The Combination Bridge Company, Appellants, *vs.* OLIVER AMES, SECOND, and SAMUEL CARR, Executors; Union Pacific Railway, *et al.*, Appellees.	No. 997	Petition for Appeal.

To the honorable circuit court of appeals for the eighth circuit:

Your petitioners, Credits Commutation Company and Combination Bridge Company, appellants, each for itself would respectfully represent and show that in the above-entitled cause, pending in the United States circuit court of appeals for the eighth circuit, there was entered at the December term, 1898, under date December 7, 1898, in said court, a final order or decree greatly to the prejudice of your petitioners; which said order or decree is erroneous and inequitable in many respects.

Wherefore, in order that your petitioners may obtain relief in the premises and have opportunity to show the errors complained of, your petitioners severally and each for itself prays that it may be allowed an appeal in this cause to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and that a transcript of the record, proceedings, and papers in said cause, duly authenticated, may be sent to the Supreme Court of the United States, and that proper orders touching security required of them may be made.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS AND
HENRY J. TAYLOR,
Their Solicitors and Counsel.

Endorsed: No. 997. United States circuit court of appeals,
199 eighth circuit, December term, 1898. Credits Commutation Company and Combination Bridge Company, appellants, *vs.* Oliver Ames, Second, *et al.*, appellees. Petition for appeal. Filed Feb. 20, 1899. John D. Jordan, clerk.

And on the twentieth day of February, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals in said cause an assignment of errors in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and THE COMBINATION Bridge Company, Appellants,
vs.
OLIVER AMES, SECOND, and SAMUEL CARR, Executors; Union Pacific Railway Company, *et al.*, Appellees.
No. 997.

Assignment of Errors on Appeal Severally in Behalf of the Credits Commutation Company and the Combination Bridge Company.

On the 20th day of February, A. D. 1899, come the undersigned, Credits Commutation Company and Combination Bridge Company, appellants, by John C. Coombs and Henry J. Taylor, their solicitors and counsel, and each severally and separately for itself says that the order or decree entered in said cause in the circuit court of the United States for the district of Nebraska is erroneous and against the just rights of each of these appellants, and that there is manifest error therein for the following reasons:

1. Because the court erred in denying the petitions of said Credits Commutation Company and said Combination Bridge Company for leave to intervene herein.

2. Because the court erred in decreeing that the petitions of said Credits Commutation Company and Combination Bridge Company do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

200 3. Because the court erred in not granting the petition of the Credits Commutation Company for leave to intervene herein.

4. Because the court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

5. Because the court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

6. Because the court erred in denying the petition of the Combination Bridge Company for leave to intervene herein.

And further severally and separately each for *him*self says that the decree or order in said cause made and entered on the 7th day of December, 1898, in said United States circuit court of appeals for the eighth circuit is erroneous and against the just rights of each of these appellants, and that there is manifest error therein for the following reasons:

7. Because the court erred in denying the petition of said Credits Commutation Company and said Combination Bridge Company for leave to intervene herein.

8. Because the court erred in decreeing that the petitions of said Credits Commutation Company and Combination Bridge Company do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

9. Because the court erred in not granting the petition of the Credits Commutation Company for leave to intervene herein.

10. Because the court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

11. Because the court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

12. Because the court erred in denying the petition of the Combination Bridge Company for leave to intervene herein.

13. Because the court erred in its final order and decree herein under date of December 7, 1898, in sustaining appellees' motions to dismiss the appeal from the circuit court of the United States for the district of Nebraska, and in dismissing said appeal.

201 Wherefore these appellants severally pray, each for itself, that the said decree or order of said circuit court and that the said decree or order of the said United States circuit court of appeals be reversed, and that the said courts be ordered to enter a decree or order in accordance with the prayers of the respective pleadings of these appellants.

CREDITS COMMUTATION COMPANY,
COMBINATION BRIDGE COMPANY,
By JOHN C. COOMBS,
HENRY J. TAYLOR,
Their Solicitors and Counsel.

Endorsed: No. 997. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and Combination Bridge Company, appellants, *vs.* Oliver Ames *et al.*, appellees. Assignment of errors on appeal severally in behalf of the Credits Commutation Company and Combination Bridge Company. Filed Feb. 20, 1899. John D. Jordan, clerk.

And on the twentieth day of February, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals an appeal bond in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants, *vs.* OLIVER *Adams*, SECOND, and SAMUEL CARR, Executors; Union Pacific Railway Company, *et al.*, Appellees.	No. 997. Appeal Bond.

Know all men by these presents that we, the Credits Commutation Company and Combination Bridge Company, principals,

202 and F. L. Eaton and Henry J. Taylor, sureties, are held and firmly bound unto Oliver *Adams*, Second, and Samuel Carr, executors, Union Pacific Railway Company, *et al.*, called herein the appellees, in the full and just sum of one thousand dollars ($1,000), to be paid to the said appellees, their successors or assigns; to which pay-

ment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, by these presents.

Sealed with our seals and dated this 20th day of February, in the year of our Lord eighteen hundred and ninety-nine.

Whereas lately, at the December term, 1898, of the United States circuit court of appeals for the eighth circuit, in a suit depending in the said circuit court of appeals between the said appellees and the said Credits Commutation Company and Combination Bridge Company, a decree or order was rendered against the said Credits Commutation Company and Combination Bridge Company, and the said named appellants having obtained a writ of appeal and filed a copy thereof in the clerk's office of the said court to reverse said order or decree in the aforesaid suit, and a citation having been issued, directed to the said appellees, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington, the third Monday of March next:

Now, the condition of the above obligation is such that if the said appellants shall prosecute their appeal to effect and answer all costs if they fail to make good their plea, then the above obligation, which is only a bond for costs and not a supersedeas bond, to be void; else to remain in full force and virtue.

CREDITS COMMUTATION COMPANY,
By F. L. EATON, *Sec'y.*
COMBINATION BRIDGE COMPANY,
By F. L. EATON, *Sec'y.*
F. L. EATON. [L. S.]
HENRY J. TAYLOR. [L. S.]

Sealed and delivered in the presence of—

——— ———.

203 UNITED STATES OF AMERICA, } ss:
Northern District of Iowa, Western Division, }

F. L. Eaton and Henry J. Taylor, being duly sworn, depose and say and each for himself saith that he is worth one thousand dollars over and above all just debts, liabilities, and exemptions.

F. L. EATON.
HENRY J. TAYLOR.

Sworn to this 16th day of February, 1899, before me—
[SEAL.] E. A. BURGESS,
Notary Public within and for Woodbury County, State of Iowa.

The above bond and the sureties thereto approved this 20th day of February, 1899.

HENRY C. CALDWELL,
Circuit Judge.
AMOS M. THAYER,
Circuit Judge.

Endorsed: No. 997. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and The Combination Bridge Company, appellants, *vs.* Oliver Ames, Second, *et al.*, appellees. Appeal bond. Filed Feb. 20, 1899. John D. Jordan, clerk.

And on the twentieth day of February, A. D. 1899, in the record of the proceedings of said circuit court of appeals is an order allowing appeal in said cause in words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1898.

MONDAY, *February* 20, 1899.

CREDITS COMMUTATION COMPANY and THE COMBINATION Bridge Company, Appellants, *vs.* OLIVER AMES, SECOND, and SAMUEL CARR, Executors; Union Pacific Railway Company, *et al.*, Appellees.	No. 997. Allowance of Appeal.

And now, on this 20th day of February, 1899, the above cause came on upon the hearing of the petitions of the Credits Commutation Company and the Combination Bridge Company for the allowance of appeals herein from the order or decree entered herein
204 at the December term, 1898, under date December 7, 1898, and now, in open court, at the same term thereof at which said order or decree complained of was so entered and rendered by this court, said appeals are hereby allowed and security for costs fixed at one thousand dollars ($1,000), and the bond therefor now on file is approved.

(Signed) HENRY C. CALDWELL,
AMOS M. THAYER,
Circuit Judges.

And on the fifteenth day of March, A. D. 1899, there was filed in the clerk's office of said circuit court of appeals a citation in said cause which, with proof of service thereon, is hereto attached and herewith returned:

205 United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1898.

CREDITS COMMUTATION COMPANY and THE COMBINATION Bridge Company, Appellants, *vs.* OLIVER AMES, SECOND, and SAMUEL CARR, Executors; Union Pacific Railway Company, *et al.*, Appellees.	No. 997. Citation.

The United States of America to said appellees:

You are hereby cited and admonished to be and appear at a Su-

preme Court of the United States, to be holden at Washington, on the third Monday of March next, pursuant to a writ of appeal filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein The Credits Commutation Company and Combination Bridge Company are appellants and you are appellees, to show cause, if any there be, why the decree rendered against said appellants herein and in the circuit court of — United States for the district of Nebraska should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry C. Caldwell, judge of the United States circuit court of appeals for the eighth circuit, this 20th day of February, 1899.

HENRY C. CALDWELL,
Circuit Judge.

206 STATE OF NEW YORK, } ss:
County and City of New York, }

I served the hereto-annexed citation on Winslow S. Pierce by handing a copy of the same to him at number 120 Broadway, in the city of New York, State of New York.

BERT HANSON.

Subscribed and sworn to before me and in my presence this 9th day of March, 1899.

[Seal of Morris I. Price, Notary Public, New York County.]

MORRIS I. PRICE,
Notary Public in and for the City, County, and State of New York.

For service of citation on the United States, see admission of service by special counsel attached to the citation in the case of Credits Commutation Company *et al.*, appellants, *vs.* United States of America *et al.*

207 STATE OF NEBRASKA, } ss:
County of Douglas, }

I served the hereto-annexed citation on William R. Kelly by handing a true copy of the same to him, at the city of Omaha, in the State of Nebraska, on the 14th day of March, 1899.

E. A. BURGESS.

Subscribed and sworn to before me and in my presence this 14th day of March, 1899.

{ Notarial Seal of Francis J. Mieding, Douglas County, Nebraska. Commission Expires 4, 23, 1901. }

FRANCIS J. MIEDING,
Notary Public within and for Douglas County, Nebraska.

STATE OF NEBRASKA, } ss:
County of Lancaster, }

I served the hereto annexed citation on G. M. Lambertson by handing a true copy of the same to him, at the city of Lincoln, in the State of Nebraska, on the 13th day of March, 1899.

E. A. BURGESS.

Subscribed and sworn to before me and in my presence this 13th day of March, 1899.

{ Notarial Seal of Emma L. Frow, Lancaster County, Nebraska. Commission Expires May 21, 1900. }

EMMA L. FROW,
Notary Public within and for Lancaster County, Nebraska.

[Endorsed:] No. 997. United States circuit court of appeals, eighth circuit, December term, 1898. Credits Commutation Company and The Combination Bridge Company, appellants, *vs.* Oliver Ames, Second, *et al.*, appellees. Citation. Filed Mar. 15, 1899. John D. Jordan, clerk.

208 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing two hundred and seven pages contain full, true, and complete copies of all the pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in the case of The Credits Commutation Company and The Combination Bridge Company, appellants, *vs.* Oliver Ames, Second, and Samuel Carr, executors of the last will and testament of Frederick L. Ames, deceased, *et al.*, appellees, No. 997, December term, 1898, as fully as the same remain on file and of record in my office.

I further certify that the original citation, with proof of service thereon, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this fifteenth day of March, A. D. 1899.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

{ Ten-cent U. S. internal-revenue stamp, canceled Mar. 15, 1899. John D. Jordan. }

Endorsed on cover: Case No. 17,328. U. S. C. C. of appeals, 8th circuit. Term No., 235. The Credits Commutation Company & The Combination Bridge Company, appellants, *vs.* Oliver Ames, Second, and Samuel Carr, executors of Frederick L. Ames, dec'd, *et al.* Filed March 18, 1899.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 233.

THE CREDITS COMMUTATION COMPANY AND THE COMBINATION BRIDGE COMPANY, *Appellants*,

v.

THE UNITED STATES OF AMERICA ET AL., *Appellees*.

ALSO No. 234. SAME APPELLANTS

v.

F. GORDON DEXTER AND OLIVER AMES, SECOND, Trustees, ET AL., *Appellees*.

ALSO No. 235. SAME APPELLANTS

v.

OLIVER AMES, SECOND, AND SAMUEL CARR, Executors of the Last Will and Testament of Frederick L. Ames, Deceased, Et Al., *Appellees*.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

STATEMENT OF THE CASE.

The appellants sought to intervene in all the above-entitled cases, and, for that purpose, filed substantially the same petition in each.

A remarkably clear and condensed statement of so much of each case as the Circuit Court thought to be

necessary to sustain a denial of relief to the appellants was made by Judge Sanborn.

Opposing counsel made liberal quotations from this statement in their printed briefs filed in the Court of Appeals, and so we now quote that statement in full.

It presents all the points of argument not sufficiently indicated in the petition itself, and may be adopted as a statement of facts, good so far as it goes. It will be supplemented where necessary in the argument.

The opinion and decision of the Circuit Court:

Judge Sanborn: "The Combination Bridge Company, a corporation of the State of Iowa, and the Credits Commutation Company, another corporation of the same State, have filed a petition for leave to intervene in three suits against the Union Pacific Railway Company.

"In the order in which these suits are brought, one of them (No. 235), is a suit brought by stockholders of the Union Pacific Railway Company for the appointment of a receiver, the administration of the insolvent estate, and the prevention of the dissipation and disintegration of the properties of the Union Pacific Railway Company.

"The second (No. 234) is a suit brought by the trustees of the first mortgage bondholders of that company to foreclose the mortgage.

"The third is a suit (No. 233) brought by the United States to foreclose the lien upon certain portions of the property of the Union Pacific Railway Company imposed upon those properties to secure a debt created by the subsidy bonds.

"The Combination Bridge Company is the owner of a bridge across the Missouri River at Sioux City. The Credits Commutation Company is the owner of the stock of the Combination Bridge Company. It is also the beneficiary under an assignment of three-

fourths of the stock of the Sioux City & Northern Railroad Company, which owns a railroad extending northerly from Sioux City for a distance of one hundred miles. It also owns a portion of the stock, or all of the stock, as a beneficiary under the assignment, of the Sioux City, O'Neill & Western Railroad Company, which has a railroad extending westerly from Sioux City to the town of O'Neill, and the stock of a certain terminal company, which has large improvements in the city of Sioux City.

"The general, perhaps the universal rule, is that no one is a proper party to a foreclosure proceeding unless he has some interest in, title to, or estate in the mortgaged property or some lien or claim upon it.

"The petitioners claim the right to intervene upon three substantial grounds:

"First, they say they are entitled to intervene for the purpose of procuring the insertion in the decree of foreclosure of a provision which shall substantially embody section 15 of the act of 1862. Section 15 reads thus:

"'*That any other railroad company now incorporated or hereafter to be incorporated shall have the right to connect their road with the road and branches provided for by this act at such places and upon such just and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act, it shall be construed to embrace the words their associates, successors and assigns, the same as if the words had been properly added thereto.*' (12 Stat. 489, C. 120.)

"There are two answers, which seem to us to be conclusive, to the claim of the petitioners to intervene upon this ground: First, neither the Combination Bridge Company nor the Credits Commutation Company has built any railroad to a connection with the Union Pacific Railway Company or its railroad. They have procured no right of way. They have accumulated no fund for the purpose of constructing a railroad. They have given no assurance by bond or by statement or moneys deposited safely

in some depository ready to be used, that they will within a limited time or within any time build a railroad to a connection with the Union Pacific railroad. We fail to see, therefore, that they have any tangible, actual interest in or lien upon the property of the Union Pacific Railway Company. The second answer is, that whatever their right or interest may be, it is nothing more than a contingent, speculative future possibility. It is contingent, because it is conditioned upon the construction of a railroad. It is speculative, because it depends for its existence upon the question whether or not capitalists shall see sufficient profit in the construction of such a railroad to induce them to put in the necessary money for that purpose. It is future, because it has not yet come into existence, and it is possible because it may come into existence.

"Courts of equity are not accustomed, perhaps they have not the power, to adjudicate upon possible rights which are not in being and which are merely susceptible of coming into being at some unlimited time in the future.

"The second ground on which the petitioners seek intervention is that one of them, the Credits Commutation Company, is the owner of one of the first mortgage bonds of the Union Pacific Railway Company and the owner of eleven shares of its stock. There are two reasons why the ownership of this bond and this stock is insufficient to give it a right to intervene in these suits. The first is that the allegations of the petition show that the bondholder is represented by his legal representatives, the trustees of the bondholders under the first mortgage, and the stockholder is represented by the Union Pacific Railway Company in all these suits, and there is no allegation or showing in the petition that the trustees for the bondholders or the Union Pacific Railway Company has entered into any combination, has committed any fraud, or has neglected any duty, whereby any injury is threatened to, or will result in any way to either the bondholder or the stockholder. Indeed, it is a fair inference from the petition that the trus-

tees for the mortgage bondholders are protecting the interest of this bondholder better, and are procuring for it more in value than the face of the bond and interest. There is no allegation in the petition that the stock of the Union Pacific Railway Company held by the Credits Commutation Company was, at the time of the combination referred to in the petition, of any value, or that it can be made of any value by granting the prayer of the petition and inserting in the decree the provision which the petitioners ask to have inserted. We think, on the other hand, that the indications of the petition are strong, that to grant that relief would tend rather to the injury than to the benefit of both the bondholder and the stockholder.

"There is another ground upon which intervention is sought. It is that these petitioners are members of the public and that they have the right to intervene for the purpose of protecting the interests of the citizens of the Republic. But the answer to that is that the United States by the officer upon whom the duty is imposed of protecting in this litigation the interests of all the citizens is prosecuting one and defending the other of the suits for foreclosure. As a member of the public, neither of the petitioners has an interest different in kind from that of every other member of the public resident in the same locality, and upon well settled principles they are not entitled to intervene upon this ground."

The decision of the Court was as follows:

"And now this cause coming on to be heard on the petition of the Credits Commutation Company for leave to intervene in the above entitled causes, and also upon the amendments to said petition presented on the hearing and taken as a part of said petition, and also upon the supporting petition of the Combination Bridge Company, also presented to the Court on said hearing, and upon the order of this Court made on April 28, 1897, upon the said petition of the Credits Commutation Company; and it appearing to the Court here that the several parties had been

notified of the time and place of said hearing as specified and required by the said order of this Court, and there appearing upon this hearing for the Credits Commutation Company and for the Combination Bridge Company, petitioners, Mr. John C. Coombs, and Mr. Henry J. Taylor, for the Union Pacific Railway Company, and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane, and Frederic R. Coudert, receivers thereof, Mr. John F. Dillon and Mr. W. R. Kelly, for F. Gordon Dexter and Oliver Ames, Second, Trustees, Mr. Winslow S. Pierce, and for the United States of America, Mr. George Hoadly and Mr. John C. Cowin; and now the Court having heard arguments of counsel and being fully advised in the premises, it is

"*Ordered, that the prayers of the petitioners for leave to intervene herein be and the same are hereby denied,* **NOT AS A MATTER OF DISCRETION**, *but because said petitions do not state facts sufficient to show that the petitioners or either of them have a legal right to intervene, and upon prayer of the petitioners an appeal to the Circuit Court of Appeals is hereby allowed. The bond on such appeal is fixed at the sum of one thousand dollars.* * * *

There was a colloquy between the Circuit Court and counsel for the respective appellees after the rendering of the opinion, and which the stenographer preserved. Leave is asked of the Court and appellees to refer to it for the purpose of showing how distinctly it was understood that the Circuit Court denied the petitions *purely as a matter of law, and with the express purpose of having its decision reviewed on appeal.*

ASSIGNMENT OF ERRORS.

The assignments of error were the same in each case, and were as follows:

"1. Because the Court erred in denying the petitions of said Credits Commutation Company and

said Combination Bridge Company, for leave to intervene herein.

"2. Because the Court erred in the decreeing that the petitions of said Credits Commutation Company and Combination Bridge Company, do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

"3. Because the Court erred in not granting the petition of the Credits Commutation Company for leave to intervene herein.

"4. Because the Court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

"5. Because the Court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

"6. Because the Court erred in denying the petition of the Combination Bridge Company for leave to intervene herein."

The foregoing errors are re-assigned in this Court, together with the following as additional:

And further severally and separately each for itself says that the decree or order in said cause made and entered on the 7th day of December, 1898, in said United States Circuit Court of Appeals for the eighth circuit is erroneous and against the just rights of each of these appellants, and that there is manifest error therein for the following reasons:

Because the Court erred in denying the petition of said Credits Commutation Company and said Combination Bridge Company for leave to intervene in said suits.

Because the Court erred in decreeing that the petitions of said Credits Commutation Company and Combination Bridge Company do not state facts sufficient to show a legal right to intervene on the part of said intervening petitioners.

Because the Court erred in not granting the petition of the Credits Commutation Company for leave to intervene herein.

Because the Court erred in denying the petition of the Credits Commutation Company for leave to intervene herein.

Because the Court erred in not granting the petition of the Combination Bridge Company for leave to intervene herein.

Because the Court erred in denying the petition of the Combination Bridge Company for leave to intervene herein.

Because the Court erred in its final order and decree herein under date of December 7, 1898, in sustaining appellees' motion to dismiss the appeal from the Circuit Court of the United States for the district of Nebraska, and in dismissing said appeal.

BRIEF OF THE ARGUMENT.

It is assumed that it is unnecessary to recite as a whole the story of the Pacific railroads.

The laws are the principal facts and are a part of our history.

A Preliminary Concession.

Possibly because of the foregoing, and for consistency with the views which the appellants entertain, a preliminary concession should be made by the appellants.

Thus: It is submitted that the acts for the creation of the bond-aided Pacific railroads are contracts between the United States and the companies they created and endowed.

The source of the aids bestowed was the liberties, the lands, and the money of the people, and these were granted in consideration of the construction, maintenance and operation of a railorad and telegraph line from the Missouri River to the Pacific Ocean, all as stipulated.

Congress relied for sanction of its acts on its power "to provide for the common defence and general welfare," "to regulate commerce . . . among the several States," and "to establish post offices and post roads."

Neither the executive nor judicial departments can supersede or destroy provisions made by Congress for these purposes.

To attain and secure these ends Congress created and retained certain control over the Pacific railroad companies and their roads, and reserved that "at all times . . . Congress may at any time . . . add to, alter, amend or repeal" the acts (Sec. 8 of the Act of July 1, 1862.)

U. S. v. *Union Pacific Ry. Co.*, 160 U. S., 1.
U. S. v. *Stanford*, 161 U. S., 412.

To the extent, therefore, in which action in the premises was or is constitutional at all, it is within the exclusive power and under the exclusive control of the legislative branch of the government; and except as otherwise expressly authorized by Congress under a strict construction of its acts, the power and control of Congress in the premises is free from interference by the executive or judicial branches or both of them combined.

In addition to this, it is submitted that no court can entertain suit against the United States or their interests without the express authority and consent of Congress; and it is added that this is especially true of the properties and interests of the United States in the Pacific railroads.

At the time each of the foreclosure suits was begun, in which suits intervention is sought by the appellants, everything involved in both of said foreclosure suits was pending in Congress as immediate and unfinished business.

As these petitioners believe that, for want of authority, the Circuit Court has no jurisdiction in either of the foreclosure suits, they ought, perhaps, to concede that they themselves should have no standing in such suits for any purpose but to suggest want of jurisdiction.

Subject to the foregoing concession, and assuming that the Circuit Court has jurisdiction, the appellants submit:

To sustain a bill or intervening petition for protection or relief in equity, a complainant must show that he has some right or interest that is threatened with imminent or irreparable injury, for which damages cannot be recovered or would be inadequate, and for which injury he would not have a plain, adequate and complete remedy at law.

And further, that when such injury is threatened to arise from the prosecution of pending equitable procedure between other parties, the superior right to relief carries with it a right to intervene in a pending suit or to do anything else which will reach the source of and stay the injury; otherwise there would be a wrong without a remedy. There is nothing peculiar in the rules or rights of intervention.

Precedent sustains, if it does not absolutely require, the discretion of the Court to go much further than this,

and to admit all the interveners who show "some interest in some branch of the case."

McKENNA, J., in *Southern Pacific Co.* v. *Board of R. R. Commissioners*, 71 Fed. Rep., 437.

The appellants seek to intervene in these suits in three capacities.

It is submitted that the opinion and decision of the Circuit Court is to the effect that *as a matter of law* the appellants did not show any right or interest in either of these capacities, which the Court could, even in its discretion, entertain.

The appellants submit consideration of their rights and interests in each of these capacities in their order.

The petition is divided into two parts: One in which the appellants seek to intervene to preserve and secure a right to a connection with the Union Pacific railroad, *notwithstanding and to survive any foreclosure sale of that road.* The other purpose is in the alternative: that if the appellants cannot secure such survival of that right, then they ask to intervene to prevent any foreclosure sale which might deprive them of that right. For the purposes of a hearing before this Court, it is thought that the alternative remedy is sufficiently argued in the petition itself. And this brief will be substantially confined to a support of the right of the petitioners to intervene to preserve and secure the right to connect and of their right to maintain an appeal from the order of the Circuit Court denying their legal right to intervene.

PART ONE.

The appellants and each of them severally seek to intervene as and for a railroad company or companies

now or hereafter to be incorporated, to protect and secure the right of the appellants or such railroad company to build a railroad from Sioux City, Iowa, to a junction with the Union Pacific Railway under the provision of Section 15 of the Act of July 1, 1862. (12 Stat., 489, Ch. 120).

Section 15 of the Act of July 1, 1862, reads as follows:

"*That any other railroad company now incorporated or hereafter to be incorporated shall have the right to connect their road with the road and branches provided for by this act at such places and upon such just and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act, it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto.*"

Substantially the whole right of the appellants to intervene upon this ground rests upon the proposition that, in consideration of the aid bestowed upon the Pacific companies, certain *obligations and servitudes* were imposed upon the companies and their roads. Some of these obligations and servitudes are due to the United Stats as such; some of them are due to the various sections and the people thereof, or to the citizens. For the preservation and enforcement of the obligations and servitudes not due to the United States as such, no intervention on the part of the United States, or its law officers, is competent or necessary, but every citizen has standing to protect his own interests.

Such division of the beneficial consideration between the State as such and the citizen prevails in the bestowal of most all quasi-public franchises, and has been emphatically declared, in respect of the consideration to be ren-

dered by the Union Pacific Railroad, by a decision of this Court.

Union Pacific R. R. Co. v. *Hall*, 91 U. S., 343.

The appellants submit that their right to build to the connection sought is supported by corresponding obligation and servitude imposed upon the Union Pacific Railroad, expressly running with that road into the hands of any company which might lawfully succeed the company named in the act, and which servitude is therefore prior in lien to any mortgage whatever,—an organic servitude.

The easement of that servitude does not pertain to the United States as such, but to any of the people—these appellants—who, in good faith, wish to use it.

Of equal importance to the appellants as is their right and interest to connect, is the protection of the power and freedom of the President, or some other tribunal, to fix and limit the right and to prescribe the "just and equitable terms" on which it is to be enjoyed.

The appellants submit that the power conferred upon the President to prescribe the places at which and the just and equitable terms upon which other roads might connect with the Union Pacific are in kind much like those generally bestowed upon County Commissioners for the laying out of highways, or upon Railroad Commissioners for authorizing the location of railroads. Both of these boards are ordinarily clothed with a wide discretion to act as public necessity and convenience may require. It is true that it was undoubtedly contemplated that the President would also consider the effect of such connections upon the business and earnings of the Pacific roads; certainly so long as they should be indebted to the United States.

But on the other hand, it is submitted that in the exercise of powers greater than are commonly bestowed upon any commissioners, the President would look over the whole country and beyond its borders, having in view the military and postal service of the country "at all times but especially in time of war," the preservation of domestic tranquility, and the promotion of the general welfare, for which objects so large a public expenditure had been made; and that an appeal to his discretion to prescribe the place at which and the "just and equitable terms" upon which the appellants should connect with and thereby extend and enlarge the usefulness of the Union Pacific road would invoke a consideration of public and local interest worthy of determination by the chief magistrate of the United States.

It is repeated that appellants assert an easement in their own behalf in the Union Pacific Railroad, and that, in accordance with the provisions of the 15th Section of the Act of July 1st, 1862, it underlies all mortgages—*is an organic servitude.*

There are two mortgage liens on the Union Pacific road:

First, by the act of July 1st, 1862, there was created an *ipso facto* first mortgage to the United States to secure a repayment of any subsidy bonds which might be issued to the companies. This was not in fact a mortgage or lien at all, though it was so called. It was the reservation of a reverter for breach of condition subsequent on a failure on the part of the companies to redeem the bonds.

Act of July 1, 1862, Sects. 5 and 6.
Act of May 7, 1878 (Thurman Act), Sect. 11.
U. S. v. *Union Pacific Railroad Co.*, 91 U. S., 72.

This reverter extended to all "rights, functions, immunities, and appurtenances," and all lands granted by the United States which should be unsold.

This reverter was in the Thurman Act (May 7, 1878, Sect. 11) expressed to cover "all rights, privileges, grants, and franchises derived or obtained from the United States."

In this Act of 1862, in Section 15, the right of other companies was secured to connect at such place and on such just and equitable terms as the President should prescribe.

It is not presumed that the United States would, in the event of a reverter to themselves, deny the right.

Other successors could not deny it for the provision that "associates, successors, and assigns" should be included wherever the word "company" was used, is incorporated in the 15th Section itself.

The Act of July 2, 1864 (13 Stat., 356, Chap, 216), gave no affirmative lien to the first mortgage bondholders. It allowed the companies to issue their first mortgage bonds, but limited the authority for their security thus:

> "The lien *of the United States bonds* shall be subordinate to that of the bonds of any or either of said companies . . . upon their respective *roads, property* and *equipment*."

That was all. The bondholders took their bonds with full notice of the provisions of the Act of 1862, to which the Act of 1864 was an amendment only.

Thus the obligations and servitudes imposed upon the Union Pacific Company and its road, not due to the

United States as such but to any citizen who has any wish or interest to avail of or enforce them, were not only expressly perpetuated under the Act of 1862 as against any company that might come into possession of the road, but in the Act of 1864 they were not included in the subordination to the lien of the first mortgage bonds.

The appellants assert that their interest is an easement supported by a servitude that runs with the land—an organic servitude.

If exception be taken to these terms, then the appellants submit that there is at least in their behalf such easement and servitude inchoate supported by a right to have the President determine and limit it, and that upon such limitation it will be consummate and vested, and the uses and enjoyment whereof can then be enforced by mandamus.

The foregoing is an outline of the appellants' claim of right and interest.

Act of March 3, 1873.
Union Pacific R. R. Co. v. *Hall*, 91 U. S., 343.

If such right and interest may be thought to be established, the only remaining question is as to whether or not those rights and interests are threatened with any determent or extinction in these proceedings. If so, appellants are of right and even of necessity entitled to standing.

The rights and interests of the appellants are jeopardized:

First, Because They are Denied by the Appellees.

A frequent ground for entertaining intervention, and one most commendable in behalf of prompt and practical

administration of justice is this: that the right or interest asserted by the intervener is denied by the parties to the suit.

Such denial impliedly admits the injury, if the right and interest exist, and equally that intervention is appropriate or necessary for protection.

The court having jurisdiction of the property in which the interest is asserted, and of the issue thus raised, and of all the parties, makes short work of the controversy by deciding it.

Joy v. *St. Louis*, 138 U. S., 1.

It is submitted that the Circuit Court did so *pass upon the merits* in this case; wherefore the appeal was from an adverse decision upon the appellants' rights and not from any discretionary judgment as to whether the appellants' remedy should be by intervention or by an original suit.

The Circuit Court itself said that the right, and not a remedy within the discretion of the court, was the issue determined. That Court "ordered that the prayers of the petitioners for leave to intervene herein be and the same are hereby denied, **NOT AS A MATTER OF DISCRETION,** but because said petitioners do not state facts sufficient to show that the petitioners or either of them have a **LEGAL RIGHT** to intervene." The order of the Circuit Court carefully recites the notice to all parties in interest, the appearance of counsel for all the substantial interests, the hearing and the arguments. Indeed, the appellees introduced evidence in the form of affidavits which, though not referred to in the opinion or order, it was understood the appellees might avail of on appeal.

Though these appellants always deny that their rights can be extinguished, it is nevertheless submitted

that the charge in their petition that their rights were ignored and denied and threatened with extinction in these proceedings is fully sustained.

That intervention was, therefore, not only appropriate, but, in the light of the decision, was necessary, and on the face of the record their sole relief lies in the maintenance of their appeal.

If their appeal be not entertained, or be dismissed, then an adjudication upon the merits which the appellees themselves put in issue in fact, and on which they prevailed, would stand both final and unreviewable in the subordinate court, all of whose determinations that are not discretionary or interlocutory, or all that purport to be final of any right or interest, are, without exception, appealable.

The law upon which the appellees relied as fact for a denial of the appellants' claims to connection under the provisions of Section 15 of the Act of 1862, does not appear in the petition.

There was but one objection raised by them which challenged the petition peremptorily on its merits.

The remaining objections were in their nature dilatory or evasive, and will be noticed later.

All objections, however, practically conceded that the appellants once had, or on the performance of some alleged condition precedent—or but for the impending foreclosures—might have the connection in the manner claimed for it.

The substantial denial and contention of the appellees was this: That the rights of the appellants and the power of the President had been superseded:

First, by Section 5257 of the Revised Statutes of the United States, which reads as follows:

> "Any railroad company now or hereafter incorporated under the laws of the United States, or of any State, which has been or may be organized under an Act of Congress, may connect its road with the Union Pacific Railroad or any of its branches."

And again by Section 562 of the Consolidated Statutes of Nebraska, in which State the appellants' connection would have to be made, and which section reads as follows:

> "Every railroad company shall have power to cross, intersect, join and unite its road with any other railroad before constructed."

Judge Dillon, who presented this argument, cited *Atchison, Topeka & Santa Fe R. R. Co.* v. *Denver & New Orleans R. R. Co.*, 110 U. S., 667; *Oregon Short Line* v. *N. P. R. Co.*, 61 Fed. Rep., 158.

From the first of these cases he argued that a provision in the Constitution of Colorado, similar to the law of Nebraska, required only a *mechanical* union of the roads; and from the second case he showed that nothing more than such mechanical union was imposed either by the third section of the Interstate Commerce Act (24 St., p. 380) or by a provision in the Northern Pacific Act, which required the Northern Pacific to form "running connections" with other roads "on fair and equitable terms."

Judge Dillon thus expanded the original right to connection with the Union Pacific until it pertained to everybody, and correspondingly limited its terms until it was of no value to anybody.

Judge Dillon represents the defendant company. He strives for its death in the hope of profit for its stockholders in the reorganization, when the new company shall be free from all the obligations, servitudes and duties of its predecessor.

The counsel for the United States concurred in his position and argument; so did the counsel for the first mortgage bondholders, he being also the representative of the Reorganization Committee.

Between these parties—both of the vendor mortgagees, the defendant company and the purchasing Reorganization Committee, and in pursuance of an order which denied that the appellants have any interest to protect which entitles them to be heard—the road is sold and bought.

It is submitted that if the appellants have any rights or interests, as asserted by them, they were not only endangered, but destroyed by these proceedings unless this Court shall review and reverse the orders of the Circuit Court and Circuit Court of Appeals.

The difference between a "mechanical union" or "physical connection" merely, and a connection at such place and on such just and equitable terms as the President of the United States may prescribe—a business connection—is the measure of the possible right and interest which the appellants assert.

It is conceded that if subsequent legislation of the United States under the Interstate Commerce Act, or Section 5257 of the Revised Statutes, or the local statutes of Nebraska, have abrogated or superseded Section 15 of the Act of July 1, 1862, then there is no substantial value

left in the right and interest which this petition is brought to protect.

Further, if the Revised Statutes, Section 5257, can possibly apply to any railroad companies not incorporated under the laws of the United States, nor organized under an act of Congress, then it is admitted that the rights secured to such railroads under Section 5257 are not so broad or beneficial as are the provisions of Section 3 of the Interstate Commerce Act (24 St., L. 380), which reads as follows:

> "Every common carrier, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their respective lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines. But this shall not be contstrued as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business."

In *Oregon Short Line and U. N. Ry. Co.* v. *Northern Pacific R. R. Co.*, 61 Fed. Rep., 158, the Circuit Court of Appeals for the Ninth Circuit held, practically, that the foregoing provision was enacted because "railroads had refused to accept or deliver traffic on any terms, and thereby froze out connecting lines." And the Court expressly refused to find that any "common law rights were enlarged thereby." The same Court, also, in the same case, said, in respect of the duty which had been imposed upon the Northern Pacific Railroad Company, "to permit any other railroad . . . to form running connections with it on fair and equitable terms" included only "such arrangement as to the time of arrival and departure of trains and as

to stations, platforms and other facilities as will enable the companies desiring to connect to do so without detriment or serious inconvenience."

In *Atchison, Topeka & Santa Fe R. R. Co.* v. *Denver & New Orleans R. R. Co.*, 110 U. S., 667, it was held (headnote):

> "The right of one railroad company to connect its road with that of another company, which has been made a part of the fundamental law of the State, implies no more than a mechanical union of the tracks of the roads so as to admit of the convenient passage of cars from one to the other, and does not include the right of business intercourse between the two companies."

The opinion of the Court in this last cited case is almost exhaustive, and shows how meagre are the rights of a connecting line entitled only to "mechanical union."

In short, if the measure of the appellants' rights under Section 15 of the Acts of 1862 are reduced to those secured under Section 5257 of the Revised Statutes and under the Consolidated Statutes of Nebraska, but subject to the unrepealed provision that the President of the United States may prescribe the place and the just and equitable terms of the connection—then all that the President of the Republic can do, but which he is requi[illegible] to do, is to determine north of whose barn or south of whose potato patch the switch shall be put in, and to arrange the time tables of the two roads as to the arrival of their respective trains on the north or south side of a country station.

It is submitted that this is not what the Congress and the people had in contemplation when, under enormous bounties, there was created "A GREAT NATIONAL HIGH-

WAY UNDER NATIONAL CONTROL, * * * so far as the public and the government were concerned, **AS ONE CONTINUOUS LINE.**"

U. S. v. *Stanford*, 161 U. S., 412.
U. S. v. *U. P. Ry. Co.*, 160 U. S., 1.

It is thought that the provisions of the Consolidated Statutes of Nebraska and the decisions upon the terms of the Constitution of Colorado need not be regarded.

Decisions interpreting regulations which a legislature or a people may establish for the connection of all railroads, in none of which roads the State as such or the people have any financial interest or easement whatever are not precedents nor are they analagous.

So, too, in respect of the Northern Pacific, whose connection with the Government and the people practically closed with the receipt of their land grants.

The distinguishing features of the relation of the bond-aided Pacific railroads to the Government and to the people have been so repeatedly and exhaustively considered by the Supreme Court as to permit of but little argument. "The citation of a single instance should suffice."

U. S. v. *Union Pacific Ry. Co.*, 160 U. S., 1.

See also *U. P. R. R. Co.* v. *U. S.*, 99 U. S., 700; also 50 F. R., 42; 91 U. S., 72; 161 U. S., 412, 432-3; *vide* also Morawetz, Sec. 1116; 101 U. S., 71-83. It must be remembered that both the constitution of Colorado and the laws of Nebraska referred to railroads in which those States had no financial interest and the construction had to be as it was in order to save the constitutionality of these enactments under the constitution of the United States

which forbade the States to impair the obligations of contracts. In the case at bar, the right to join the Union Pacific was contained in its charter, and so was a part of its contract.

Coming to Section 5257 of the Revised Statutes, the first question is whether, by its plain reading, it permits any connection with the Union Pacific Railroad, of the road of any company not incorporated under some law of the United States or organized by an Act of Congress. It is submitted that it does not; so that, as to such companies, Congress by the act of incorporation or organization thereof would take to itself the determination of the place at which, and the just and equitable terms upon which, such road should connect with the Union Pacific.

It is again submitted that the Statute cannot refer to railroad companies organized or incorporated under the laws of the United States or of any State, since this would seem to be a wanton discrimination against the territories dependent upon the Pacific railroad system, and which territories have been accustomed to incorporate railroad companies.

But if it can be entertained that the section relates to all railroads organized or incorporated under the laws of the United States or of any State, there yet remains to consider whether, by implication, it repeals Section 15 of the Act of July 1st, 1862.

The appellees themselves did not dare to suggest that it operated as such repeal. Every rule of construction is against such contention, and its adoption in respect of our laws in relation to the Pacific roads is practically forbidden for the sheer disaster and consequences which would follow.

The most that the appellees asserted in behalf of the section was that Section 5257 "is a ratification and permanent enactment of the 15th Section under discussion." The answer to this is short. To be construed as a ratification and permanent enactment of Section 15 of the Act of 1862, it must be its equivalent.

It must be conclusively presumed that a "mechanical union" anywhere is equal to and includes *every* just and equitable term which the President of the United States might prescribe.

The appellees did not believe this themselves.

They would not have Section 15 of the Act of 1862 incorporated in the decree.

We ask leave again of the Court and of the appellees to quote from the hearing:

> Judge Sanborn: "Perhaps, Mr. Coombs, the counsel on the other side would be willing to concede that there should be such a provision inserted in the decree. How is that, Mr. Pierce?"
>
> Mr. Pierce: "It is in the law now, if your Honor please, the most ample and complete provision for connection."
>
> Judge Sanborn: "But the question is whether you are willing that there should be inserted in the decree the same provision."
>
> Mr. Pierce: "The provision, as I understand, your Honor, for mechanical connection with the property, that is the construction which has been given by the Supreme Court to provisions in sections for connections of this character, the mechanical union of the property. I do not think there would be any objection——"
>
> Mr. Hoadley: "This is not the time now. If the Court please, when Judge Cornish come to the hearing, there will be a good deal to be said about——"

Judge Sanborn: "There will be, but if you are willing that this question should be inserted in this decree, it is unnecessary to further argue this matter."

Mr. Hoadley: "I don't believe I am willing to put in anything that would satisfy Mr. Coombs. I know him too well for that. If you concede one thing that he wants, he wants another. I don't mean anything against my friend Coombs."

Judge Sanborn: "Mr. Coombs, you may proceed."

The appellants have no hesitancy in submitting this question to the Court practically without other argument than the statement of it. The Circuit Court did not deem the contention of appellees worthy of reference in its opinion as a ground for its decision, but reached its conclusions on the dilatory and evasive objections raised.

The Evasive and Dilatory Objections.

The Circuit Court, in speaking of the appellants' right to the connection, said:

"There are two answers which seem to us to be conclusive to the claim of the petitioners to intervene upon this ground: First, neither the Combination Bridge Company nor the Credits Commutation Company has built any railroad to a connection with the Union Pacific Railway Company or its railroad. They have procured no right of way; they have accumulated no fund for the purpose of constructing a railroad; they have given no assurance by bond or by statement or moneys deposited safely in some depository, ready to be used, that they will, within a limited time, or within any time, build a railroad to a connection with the Union Pacific Railroad. We fail to see, therefore, that they have any tangible, actual interest in or lien upon the property of the Union Pacific Railway Company."

To these objections, as a matter of law, the appellants demur, and to their equity they take exception.

The law prescribes no such conditions precedent to the preservation of the appellants' rights, and if it did a court of equity should afford to the appellants an opportunity to satisfy the conditions before destroying or forfeiting the right.

But the law does not impose the conditions. The whole implication of the Statute and much of its expression is to the contrary.

The construction of the Circuit Court involves an absurdity, to-wit: That the Company must build its railroad before it can ask the President to locate it.

Indeed, the provision of the section under which the appellants claim, that any railroad company *now or hereafter to be incorporated*, affords an exception to the usual railroad incorporation.

That is to say, the location or route of a railroad company is ordinarily a part of its charter, but this act practically prohibits locations until the sanction of the President and the terms of the connection are *pre*-scribed.

The President would have much to consider—the public necessity and convenience to be served, possibly the conflicting claims of different sections, the effect upon the earning capacity of the Union Pacific. On the other hand, the applicants would learn something of the prospective value of their undertaking.

Capital must not only follow the *right* to embark, but will only follow the approval of the enterprise; it cannot precede either.

Judge Hoadley further suggested that the appellants "fail in failing to show that the President has fixed the point of connection."

This, too, is temporary and evasive.

It is admitted that the President had not been asked to do so, but he was afterwards though since the hearing and before the sale; and the appellants' rights cannot be sacrificed by the President's delay.

The foregoing is perhaps a sufficient answer under the law to legal objections not found in the law.

In addition to this, and to show that the appellants have not slept upon their rights, the Court is reminded from the petition:

The Union Pacific Railroad has been in the hands of receivers since 1893; it was there before the appellants' bridge was completed.

These petitioners believed that these matters were to be adjusted before another tribunal. They have been constantly before the committees of two Congresses, seeking to protect their interest in the premises in legislation which then was and prior to the filing of said foreclosure bills had been pending. While they were thus engaged, and while the Congress was intent upon the disposition of substantially all interests involved the appellants were surprised to learn of the filing of the bill herein in behalf of the United States and the purported entry of an appearance by or for the United States in the prior foreclosure suit for the first mortgage bondholders.

The appellants submit that since the road has been taken into the custody of the judiciary, it would be a seeming discourtesy, if not contempt, for the President to interfere and authorize a direct connection with it.

The general assumption by the Court that the appellants have not made sufficient preparation by their works to entitle them to the connection, it is submitted, is not considerate.

The appellants' petitions show two railroads, a railroad bridge, and large terminal properties in and entering Sioux City, and large stock yards and packing plants which draw their supplies from all the territory occupied by the Pacific roads.

All these cost about ten millions, and the transportation properties were designed, acquired, and constructed to accommodate, and all depend upon, some southwestern and transcontinental railroad connection, and all are demonstrably of little or no value without that. (No. 233, p. 151.)

The original petitioner, the Credits Commutation Company, has no present capacity to own and operate railroads. It can, however, under the laws of Iowa easily and at will enlarge its powers by amending its articles at any time.

Its co-petitioner for the connection, the Combination Bridge Company, has such powers, and has recently completed a railroad bridge across the Missouri at a cost of about a million and a quarter. All the stock of this last named company is owned by the Credits Commutation Company. Over this bridge the Sioux City, ONeill & Western Railroad, 130 miles long, comes into Iowa from Nebraska. The Credits Commutation Company owns substantially all of the stock of that company, too. The bridge is within ninety miles of the Union Pacific main line at Columbus, and is within about sixty miles of a branch of it at Norfolk. The Sioux City, O'Neill & West-

ern road runs to within about seventy miles of the Union Pacific main line at Columbus, and within twenty-five miles of the Norfolk branch of it.

That is about as near to a connection as the appellants could come without discourtesy to the President or contempt of the Court.

The Combination Bridge Company's railroad bridge is a railroad.

> *Ry. Co.* v. *Keokuk & Hamilton Bridge Co.*, 131 U. S., 371.

Not only so, but Judge Hoadley, who had been counsel in the case just cited, was kind enough to say at the hearing:

> Mr. Hoadley: "Mr. Coombs, that case helps you a great deal more than you think. It assumes, it don't decide. I tried to get the Court on a second hearing to decide that that bridge, having a railroad to which the C. C. & I. C. Company reached within two hundred miles and no nearer, under a law of Illinois, that there is such a contract as this, when they touched each other, to make contract, *and I suppose that in the opinion of the Supreme Court of the United States I am justified in assuming that two hundred miles is touching distance.* It is further than your hypothetical point of connection is in this case, but I never could get the Court to come up to the scratch and tell me why it was."

It is submitted that the appellants make the largest private bid of wish and ability that was ever offered in the West for a right to participate in a public benefit.

A second dilatory argument was made by Judge Dillon and adopted by the Circuit Court in its second answer to the appellants' claim of right to connect. It was this:

Judge Dillon expressed it in a quotation from *Cross* v. *DeValle*, 1 Wallace, 14, as follows:

> "A chancellor will not maintain a bill merely to declare future rights. The Scotch tribunals pass on such questions by declarator, but the English courts have never assumed such power. In *Langdale* v. *Briggs*, Lord Justice Turner remarks: 'As long as I have known this court, now for no inconsiderable period, I have always considered it to be settled that the court does not declare future rights, but leaves them to be determined when they may come into possession.'"

This case and those on which it relies do indeed hold in respect of the somewhat curious and nearly antiquated real estate law that a conflict of interest to arise upon the vesting of a contingent remainder, if the remainder ever vests, will not be entertained by the court before that event; especially, as the Court say, when the parties are not before the court nor yet born.

But there are exceptions even to that.

The head-note of the case goes on:

> "There are exceptions to this rule, as bills filed by executors or trustees for a construction of a will *and the direction of the court as to the disposition of the property.*
>
> "In such cases from necessity, and in order to protect the trustee, a court will settle questions as to the validity and effect of contingent limitations in a will *even to persons not in esse* in order to make a final decree and give proper instructions in relation to the execution of the trusts.
>
> "But where no such necessity exists, the court has no power to decree as to future rights of parties not before the court or *in esse*."

If that law has anything to do with this case, the case is within the exception.

The case referred to is otherwise an authority for the appellants.

The Statutes vest in the President of the United States a power in trust for the appellants. It is a power coupled with an interest in the United States and in the people, and there is to be a disposition of the property.

The Circuit Court, however, adopted the argument of the appellees, and in respect to the appellants' claim of a right to connect, said:

> "Our second answer is that whatever their rights may be, it is nothing more than a contingent, speculative, future possibility."

The Court erred. The *right* is in no such doubt; the *road* may be. So is justice, but not so the right to it; so is everything except the past, and so was that. If such material conditions or doubts oust jurisdiction of the right, the only interests left for courts to consider are those concerning which there can be no controversy.

But see *Peter* v. *Farrel, etc., Co.*, 42 N. E. R., 690, 697.

It is true that adverse interests and discriminations may, as heretofore, again postpone the building of a connection from the Middle Northwest to enjoy the easement to which that section is entitled in this property.

But a servient estate cannot be sold free of an easement of light because the dominant one is not yet built upon, nor because night is approaching and tomorrow's sun has not risen today.

The third dilatory suggestion and argument were made by Judge Hoadley. They were not adopted by the Circuit Court. They amounted to this:

To sell the property first and find out what was sold afterwards. He said, in substance, that if the appellants' rights were unsaleable they would not be hurt, and if they were saleable they would be destroyed and could no more be heard to complain.

He puts it thus :

> "Mr. Coombs has worked himself into a dilemma, and he don't know it. This provision is either a provision of general law which is binding for all time until repealed, or it is a provision of private law, binding on the Union Pacific Railroad for all time until repealed, or it is nothing. *If it can be wiped out by a foreclosure, it is binding on nobody.* Your Honor can't use your discretion as a judge to incorporate into the decree, as a provision of contractual obligation, this section unless it is a section embodied in the law of the land, for the government of the Union Pacific, always." . . . .
>
> "It is a physical connection is all that is meant. . . .
>
> "Now this is enough for this, and Mr. Coombs don't see—can't be made to see—that either this is a provision which your Honor can't wipe out by your decree, which any omission in your decree will fail—cannot dissolve, or destroy, in which case he will get the benefit of it, or else it is nothing. It is a provision for the benefit of the present company and *which is extinguished by the sale.*"

It is submitted that one may not so fire upon a man, for that if he is missed he is not hurt and if he is killed that closes his mouth.

And it is further submitted that a more imperative case for intervention could not possibly be stated.

Under this argument of Judge Hoadley, the greatest practical danger threatens the appellants' interests.

The decrees taken in pursuance of the argument purport to sell everything except the rights reserved to the United States. The appellants will, if necessary, invoke the reservation by which "all the rights of the complainants, the United States, not disposed of by this decree are hereby reserved to them," for the preservation of the rights herein claimed.

This puts Judge Hoadley himself in a dilemma.

He makes it necessary for us to submit that the position taken by the United States is lacking in both political and financial honesty. He is serving his Government too well. He considers only the price.

Yet the Court, in answer to the request of the appellants for leave to intervene for the protection of their rights as citizens of the Republic, said:

> "There is another ground upon which intervention is sought. It is that these petitioners are members of the public, and that they have the right to intervene for the purpose of protecting the interests of the citizens of the Republic, but the answer to that is that the United Sates, by the officer upon whom the duty is imposed of protecting in this litigation the interests of all the citizens, is prosecuting one and defending the other of the suits of foreclosure. As a member of the public, neither of the petitioners has an interest different in kind from that of every other member of the public resident in the same locality, and upon well settled principles they are not entitled to intervene upon this ground."

Always reserving that the appellants do present a right and interest here other and different from that which might be asserted by most of the citizens, it is added that Judge Hoadley himself practically disclaimed that he was protecting the appellants even while he insisted that they should not be allowed to protect them-

selves. He certainly was not defending nor protecting any rights or interests in the premises not strictly due to the United States as such.

Judge Hoadley had made a trade for the Government, by which the Government secured a bid of forty-six millions for its interests in the road, and he did not want to burden the property with all the organic servitudes imposed upon it for the use and benefit of the people. The Government might lose the bid and the sale.

He feared that if the President or the Court should allow the appellants to continue their road to a connection with the Union Pacific at Columbus or North Platte on the terms which the appellants urged and to which, for the section they represent, they claim to be entitled, then other servitudes might be imposed and the proposed bidders might withdraw.

He accordingly voiced the Government's interpretation of the law, that the appellants had nothing but a right to a physical connection under the laws of Nebraska or, possibly, he included Section 5257 of the Revised Statutes.

It is thought that this statement does him no injustice and that he will not object to a quotation from the hearing:

> Mr. Coombs: "The Judge (Hoadley) does not think it a good thing for the United States to have anything to do with the railroad anyway."
>
> Mr. Hoadley: "Right you are." . . .
>
> Mr. Coombs: "I say he is so anxious for the United States to get rid of it that he doesn't care what becomes of it."
>
> Mr. Hoadley: "Provided its value is paid into the United States under existing laws; yes, sir."

But it is submitted that there is answer to this.

There is a liberty of the people to apply to the President, a right in them to have his judgment, and power to have it enforced in court, all bought by and for and paid for by the people. *These—their liberties, rights, and powers, and others like them secured to the people—are not treasury assets;* they are not for sale at public auction—not to anybody, even an alien corporation, if it would bid the most.

The obligations and servitudes imposed upon the property that secure these are not due to the United States as such, but to the contrary and if necessary to the monetary loss of the United States. They are due to *these appellants* and to others who, as the appellants in fact, *may have made even vast expenditures in reliance upon these obligations and servitudes and in the enterprise which such promised benefits invited.* (No. 233, p. 149-151; No. 234, p. 159-161; No. 235, p. 153-155.)

> "The rights of every man end where the rights of any other man begin."

Let the United States sell, if they can and will, what belongs to the United States *as such;* let them not enhance the price by adding something which does not belong to them but to the appellants.

Beyond the price of that which pertains to the United States *as such,* the money consideration is no more the concern of the court which fixed the bid than it was of the executive that secured it, and it was no concern of either. The question is broader than the mere collection of a debt.

U. S. v. *Union Pacific Ry.*, 160 U. S., 1.

This must be the law. But still the danger threatens:

These appellants feared and submitted to the Court that the power vested in the President of the United States to fix the place at which, and to prescribe the "just and equitable terms" upon which, another railroad may join the Pacific road, might be terminated by a voluntary foreclosure sale in behalf of the United States. This capacity in the President might be construed as a power in him, as agent, coupled with an interest in the United States as his principal. In which view such power, if continued after voluntary sale, might be a mere judicial function which may not be exercised by the chief executive as such.

The appellants also feared that if they were not to intervene, a purchaser might claim the protection of bona fide purchase because of his ignorance of the fact that anybody wanted to avail of the right to connect under the law.

While it is asserted by the appellants that the power conferred upon the President, under Section 15 of the Act of 1862, was coupled with an interest in the people and not solely in the United States as such, and should and was intended to survive the payment and discharge of the financial obligations due by the companies to the United States, it is nevertheless feared that, by a voluntary sale on the part of the United States of all its interests, the appellants' tribunal would go with the rest.

At least, as the appellants submit, if the law officers of the Government sell the property under an interpretation and construction of the law to the effect that such powers as those upon which the appellants must rely are no longer retained, it is possible that no President of the United States would ever subject himself to the suspicion or accusation of bad faith to the purchaser which would

be urged upon any attempt by any President afterwards to exercise those powers.

This is practically conclusive that the rights of the appellants to have the powers exercised will be destroyed, since it is thought that mandamus lies from no court to the President of the United States.

Even if the appellants have the right to connection which they assert, and even if as a matter of law such rights would survive the sales, the power of the sole arbiter to determine and award the right will have been lost. On this it is submitted as cardinal that if any court deprives a suitor of the only other tribunal in which his right and interests may be determined, that court is in duty bound itself to hear and determine the right.

The application of this to the case at bar is self-evident.

To this intervention, every interest known to the appellants was made a party. This included all the mortgagees, the defendant company, and the Reorganization-Committee which afterwards actually purchased the properties, and to those parties the claim of the appellants was, therefore, made known. They bid with full notice. No injustice will be done to them, therefore, if any rights to which the appellants may be entitled be herein protected and enforced.

Tennessee v. *Quintard*, 80 Fed. Rep., 829.

The Place and Terms of the Connection Sought by the Appellants.

Very likely this appellate tribunal would not undertake to fix the place at which or the just and equitable

terms upon which the appellants might build to a connection with the Union Pacific.

Possibly the most this Court will ever do in that event will be to remand the case to the Circuit Court for such determination.

Nevertheless it is thought that this Court might like to know something of the reasons which make the appellants strenuous for a *business* connection on just and equitable terms instead of a mere *mechanical* union.

To understand this, some reference must be made to the history of the road and its sectional influences.

The Pacific Railroad acts contemplated the construction of but *one* railroad from the Missouri River to the Pacific Ocean, but that to secure equal and impartial benefit thereof to the various sections of the whole country, it was provided that the main line should terminate in the east on the one hundredth meridian, whence, diverging in three branches, it should rest for a base on the north and south trend of the Missouri River between Kansas City and Sioux City.

This stretch of the river was foreseen to be, and for imperative natural reasons, as well as by the Acts, it is and always will be a base line, not only for direct, but the principal one for all divergent and convergent, transcontinental or nearly transcontinental transportation.

The Sioux City branch, projected from the original initial point of the main line of the Union Pacific, would pass through Minneapolis and St. Paul to the nearest lake navigation at Duluth. It was intended to accommodate the Middle Northwestern country and the Lake traffic.

The Kansas branch in like manner projected would fall at New Orleans, and the Omaha branch extended would pass between the Lakes and the Ohio River or the Alleghenies. The comprehensive scheme was recognized by the Supreme Court in:

Union Pacific R. R. Co. v. *Hall*, 91 U. S., 343.
U. S. v. *U. P. Ry. Co.*, 160 U. S., 1.
U. S. v. *Stanford*, 161 U. S., 412.

The plan was somewhat modified in the Act of July 2, 1864, but the natural facts on which it rested and the wisdom of it were not.

By palpable misrepresentations made to the Government, such misdirection and mislocation of the Sioux City branch was made that for the most part it ran away from rather than toward the Pacific.

The branch, as built, has always militated, and its energies have ever been exerted, against the purpose for which it was designed, and with a result in railroad development of unparalleled adversity to the Middle Northwest and to Sioux City in particular.

The wrong was flagrant and notorious. It has been the subject of much debate in Congress. No commission or committee's report has failed to notice it. The railroad commissioner's annual and special reports have frequently referred to it. The legislatures of the Middle Northwestern States protested at the time. The commercial and other associations in cities and towns of Wisconsin, Minnesota, the two Dakotas, Nebraska and Iowa have petitioned the Congress for relief from it in pending legislation. The railroad properties of the appellants were intended to correct it. They were aided not merely in the customary donations and rights of way, but by

public taxation in Sioux City alone to the amount of over three hundred thousand dollars.

All the just and equitable terms which the petitioners asked for the connection to which they were entitled under Section 15 of the Act of July 1, 1862, were those intended to be secured to the Sioux City branch as well as to the other branches under Section 15 of the Acts of 1864.

> "Sect. 15. And be it further enacted, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, *so far as the public* and the government are concerned, *as one continuous line;* and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time and transportation without any discrimination of any kind in favor of the road *or business* of any or either of said companies, or adverse to the road *or business* of any or either of the others."

The urgency of the request is extreme. The rest of the Union Pacific system is sold, but not the original Sioux City branch. That city and all the Middle Northwest, of which Sioux City is representative in the Acts, their railroads and the systems that center in that city are sold out of even a nominal connection and into a perpetuity of discrimination against them. The discrimination is in the business as well as in the existence of adverse, and the absence of favorable, railroad construction.

By contract between the Union Pacific and a single other large company, all unrouted traffic available to both is exchanged between them to the exclusion of all other roads. Such other company appears to have an equal, if not a dominant, representation on the purchasing Union Pacific Reorganization Committee, so that a renewal of the contract after reorganization is to be expected.

The appellants might pour unlimited business over the Union Pacific without a dollar of return traffic.

No road can live so.

It is submitted that it was in respect of the "*business,*" as well as in the arrangement of time tables, that Section 15 of the Act of July 2, 1864, and Section 15 of the Act of July 1, 1862, were passed. It was to protect the enterprise and railroads of the Middle Northwest, as well as of the other sections, from unequal oppression.

It is the *business* and its demands, the capacities and facilities for it, that the President of the United States would take into account in determining the *just and equitable terms* on which the Middle Northwest should have its connection.

It was the disposition of the vast influence of the most potent developing agent on the continent which it was thought should be entrusted only to the President of the whole country, so that this provision for the general welfare might be enjoyed on just and equitable terms and impartially by every section seeking connection with the system, and it was not intended that the greatest public-aided enterprise of any time should be diverted from its purpose to become tributary to a single corporation.

U. S. v. *Stanford*, 161 U. S., 412.
U. S. v. *U. P. Ry. Co.*, 160 U. S., 1.

At least it is the right of the appellants so to urge and to be heard by some tribunal with jurisdiction to determine.

It is repeated that the statement of the Circuit Court does not sufficiently express the importance to the appellants of the connection sought. The appellants have rail-

road, bridge and terminal properties in and entering Sioux City and large stock yards and packing plants which draw their supplies from all the territory occupied by the Pacific railroads. All these cost about ten millions, and the transportation properties were designed, acquired and constructed to accommodate and all depend upon some southwestern and transcontinental railroad connection.

Judge Dillon at the hearing himself stated it well; doubtless from his memory of that former time. He said:

> "This was one great transcontinental line projected through hostile Indian tribes over wildernesses and mountains. If it was ever to be built it was not dreamed of that it would be paralleled ever or in a remote time. The whole scheme shows you that it was thought if Congress thus crossed the deserts and the mountains with this line, that those through the well-settled portions of the country would converge to it, and so it provides for a connection of all these branches and a continuous operation, and it provides, so far as the companies which composed the Pacific family are concerned, those which are subsidized, the Kansas branch and the Central branch and the Sioux City branch, that there shall be no discrimination between them, but that provision is limited to the members of the Pacific family. This has become unimportant now because this provision against discrimination in this section of the Pacific Railroad, against discrimination among the members of the family is no more than the general provisions of the Interstate Commerce Act. Ceased to be of any particular value."

If they thought so why not incorporate it in the decree? It was all the appellants asked.

The "Pacific family" is broken up by this sale, but the Union isn't. The simile is unhappy—the members of that family were never pacific, but in the breaking up of

the family Sioux City and the Middle Northwest have not lost their inheritance in the public enterprise and they wish to retain it.

The Interstate Commerce Law is no substitute or equivalent. The physical difficulties in the way of transcontinental construction so graphically described by Judge Dillon still exist. Another parallel line is not to be thought of, and the discrimination against equal benefit in this one for the section represented by these petitioners has been continually aggravating.

The appellants seek some tribunal with discretion and power to terminate it.

Whether the President would accord the terms which the appellants seek is, of course, uncertain, but the appellants have a right to ask him or to ask any Court which takes away their right to ask him.

The appellants entertain the view that the control of the United States over these roads was intended to be *perpetual*, so that its objects might be served *always* and survive a settlement of the debt.

The appellants do not believe that the roads can be sold to strangers free from such control.

They do not believe that it was contemplated that the roads should be sold at all in foreclosure proceedings.

If the appellants may not otherwise preserve their rights, they deny that there has been, in fact, any authorized sale of the road.

Nevertheless, the sale under the order of the Circuit Court has been had, and, while it stands, any application

to the President to interfere would, for reasons hereinbefore stated, be idle. Certain rights, it is true, were reserved to the United States, but whether as such only or intended to be inclusive of the rights of the appellants is thought to be uncertain.

Still it is submitted that the appellants do not lose their right because of the inability of the parties to reach the terms of agreement in the manner contemplated by law, and that in such contingency the Court itself, having the controversy and the parties before it, will go on and decide the matter, and that the Court will do this on intervention.

Joy v. *St. Louis*, 138, U. S., 1.
U. S. v. *U. P. Ry. Co.*, 160 U. S., 50-1.

Some Further Consideration of Authorities as to Intervention and the Maintenance of the Appeal.

On this question of right and interest, the appellants submit that they are somewhat sustained by the special legislation of Congress in respect of these roads.

Section 10 of the Thurman Act (Act of May 7, 1878) provides as follows:

> "Sect. 10. That it is hereby made the duty of the Attorney-General of the United States to enforce, by proper proceedings against the several railroad companies respectively or jointly, or against either of them, and others, all the rights of the United States under this act and under the acts hereinbefore mentioned, and under any other act of Congress or right of the United States; and in any suit or proceedings already commenced, or that may be hereafter commenced against any of said companies, either alone or with other parties, in respect of matters arising

under this act, or under the acts or rights hereinbefore mentioned or referred to, *it shall be the duty of the court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to.*

This section, in spirit, certainly covers intervention on a claim of right and interest, because it eliminates all objection on account of multifarousness, which is perhaps the only ground for a discretionary denial of intervention.

With multifariousness and joinder of parties eliminated as objections, the only grounds on which intervention can be refused is either a denial of any right or interest as matter of law or the suggestion of another remedy.

Intervention was sustained in *Tennessee* v. *Quintard*, 80 F. R., 829, for the reason that "no other method has been suggested by which the State could have asserted or secured an adjudication of its rights."

Congress has otherwise been liberal in its special provision for the elimination of technical objections in suits respecting the Pacific railroads. It was so in the Act of March 3, 1873.

This Court has in like manner sustained the rights and interests of citizens in the Pacific roads with disregard for technicalities largely.

Union Pacific R. R. Co. v. *Hall*, 91 U. S., 343.

And finally it may be suggested that the relation of the people to this property is such that no federal tribunal, sensible of the genius of our people and their institutions, would much entertain a technical objection to

the rights of any of the people, at least to be heard, where they thought and asserted that their interests were involved.

Coming more directly to precedent, the appellants refer to a case already cited as authority for carrying intervention further than is asked in this case.

Joy v. *St. Louis*, 138 U. S., 1.

The issue of the appeal in this case seems to have been between two interveners. There was a contract between the city and a foreclosed railroad company, by which other railroads entering the city should have a right to connect with and run into the union station over the tracks of the foreclosed company. After foreclosure sale, and after confirmation, and when nothing remained but to pass the deeds, an intervention was admitted to secure such connection in behalf of another railroad company. The purchaser at foreclosure was also admitted on intervention and said that the obligation of the contract was not a servitude running with the railroad of the foreclosed company, but was a mere contract which had been terminated by the sale.

The Court said, in substance, that it was not necessary to determine whether the right to connect and use was a servitude running with the property, or a contract; it survived the sale. The purchaser further objected that if it did so survive the contract provided that the terms of such connection and use were to be agreed upon between the two companies and that they had not so agreed. To which, again, the Court replied that it was clear they never would agree and that, as the purchaser had denied the right, which right the Court had jurisdiction to determine, and as the parties were before the Court,

the Court would itself go on and fix the terms, and the court did so.

If in that case it was the foreclosed company and not its assigns which had to agree with any other company as to the terms of the connection and the use, then that case was almost identical with the one at bar. Then, in that case, one party whose concurrence as to the terms was essential had ceased, by the sale, to have any interest; just as the United States and their President, it is contended, will, on like event in this case, cease to have any interest.

If that case was not identical with this one in that respect, and it does not appear that it was, then the Court entertained the interventions of the conflicting interests and settled them even after sale, and though it was clear that in that case the connecting road could have enforced its rights in a subsequent original suit.

> "The right of intervention is bottomed upon interest in the subject matter of the controversy."
>
> Jenkins, J., *Farmers' L. & Tr. Co.* v. *Chicago & N. P. R. Co.*, 68 F. R., 412, 418.

An "interest in some branch of the cause."

> Bradley, J., *Williams* v. *Morgan*, 111 U. S., 684.
>
> McKenna, J., *So. Pacific Co.* v. *Board of R. Com'rs*, 71 F. R., 437, 439 40.

> "Even a contingent right to property or a fund which is the subject of an equitable action."
>
> *Peter* v. *Farrel, etc., Co.*, (Oh.) 42 N E., 690, 697.

In *Southern Pac. Co.* v. *Board of Railroad Com'rs, ubi supra*, it was held that the Thurman Act gave to the United States Government such a substantial interest in the revenues of the Union and Central Pacific Railroad

companies as to authorize intervention by the government in a proceeding involving the validity of an order made by state railroad commissioners reducing the rates chargeable by one of such companies.

Justice McKenna, then Circuit Judge, said:

"It is objected generally by counsel for the commissioners that no case can be cited which has sustained an action by one not having the legal title. In the Texas case (*Reagan* v. *Trust Co.*, 154 U. S., 362) the complainant was a trustee in a trust deed executed by the railroad company to secure a second series of bonds aggregating over $7,000,000. There was a prior issue of over $7,000,000, secured by a conveyance to others as trustees. The deed, therefore, was only security, and it was a second and a subordinate one besides. In the Ames case, 64 Fed. Rep., 165, the complainants were stockholders only. In *Williams* v. *Morgan*, 111 U. S., 684, the suit was to foreclose a mortgage on a railroad, and the interveners were simply holders of the railroad bonds. In the first two cases the right of complainants to sue was not raised. It was taken for granted. In the last case the right of the interveners was contested, and Justice Bradley, speaking for the court, said, after reciting the facts:

> 'From this recital of the facts in that case it appears that the bondholders were permitted, as Williams and Thomson (also bondholders) were in the present case, to contest the claim sought to be established as prior to the mortgage. The purchaser was not allowed to contest the claim, because he had no right to do so by virtue of any stipulation made either at or before the sale.'

"Then, proceeding, he says:

> 'This, as it seems to me, placed the purchasers in the present case in a very different position from that which Swan occupied in the case cited. But, if we are mistaken in this view, as regards their position as purchasers, there can be no doubt that, as bondholders, they had a right, under the leave of the court (which was given to them, *and which could not*

have been properly refused), to oppose the charges and allowances in question, and to appeal from the order by which they were allowed. We think that the position of Williams and Thomson made them *quasi* parties in the case, and brought them within the reason of the former case decided by this court, in which persons incidentally interested in some branch of a cause have been allowed to intervene for the purpose of protecting their interests, and even to come into this court, or to be brought here on appeal, when a final decision of their right or claim has been made by the court below.'

"The learned justice then quotes a number of cases variously illustrating the principle. The principle announced, therefore, is '*interest in some branch of the cause.*'" (71 F. R., 439-440.)

"If it has the right to regulate fares and freights, as it contends, and which I have expressed a doubt of, the right to urge it is not exclusively in the government. The railroad company may urge it, and no other issue can be changed or the proof of it lightened by the government's absence from the case. With or without it, the complainant must prove its bill. The government has no more power in this court than other suitors. With or without the aid of complainant, it must prove its bill." (71 F. R., 440.)

As to the interest or right that a party should have to entitle him to intervene, the Supreme Court of Ohio lay it down broadly as follows:

> "*Whenever a party shows even a contingent right to property or a fund which is the subject of an equitable action, he should be accorded a hearing for its protection. An unyielding principle of natural justice accords him this right.*"
>
> *Peter* v. *Farrel, etc., Co.*, 42 N. E. R., 690, 697 (Ohio).

The appellants had an "interest in the subject matter of the controversy." They had an "interest in some branch of the cause." They had at least "a contingent

right to property or a fund which is the subject of an equitable action." "The ends of justice would be subserved by it" (intervention).

Further, if the government holds and in this suit is representing these liberties as trustee for the appellants, then are the appellants *quasi* parties and entitled to be heard in their own behalf; since the interest of the government in this suit as it is conducted is *avowedly hostile* to the appellants' rights. The government will not save these liberties of the public; for that would lessen the price. In this suit the government is avowedly looking for dollars for its treasury, and not for the preservation of servitudes for its people.

These are hostile interests. The agents of the government have attempted to trade appellants' rights away and now move in accord with other parties to the suit to carry out that trade. This avowed hostility of the government entitled the appellants to be heard in their own behalf.

Williams v. *Morgan*, 111 U. S., 684.

The Court of Appeals dismissed the appeals on the ground that the order was not appealable for two reasons: (a), that the order "rested in the sound discretion of the chancellor;" and (b), that the order was not a final order. (Rec. No. 233, p. 181; 91 F. R., 570.)

I.

On the alleged ground that the appeal is an attempt to control the discretion of the Circuit Court:

The answer to this objection is:

(a)

THAT THE DECREE APPEALED FROM SHOWS UPON ITS FACE THAT THE CIRCUIT COURT REFUSED TO EXERCISE DISCRETION AND ADJUDICATED UPON THE MERITS AND LAW QUESTIONS, AND THE DECISION THEREFORE PRESENTS QUESTIONS OF LAW REVIEWABLE ON APPEAL.

The assailed order reads (R., p. 153, of No. 233): "Ordered, that the prayers of the petitioners for leave to intervene herein be and the same are hereby denied, *not as a matter of discretion*, but because said petitions do not state facts sufficient to show that the petitioners, or either of them, have a *legal right* to intervene, and upon prayer of the petitioners an appeal to the Circuit Court of Appeals is allowed."

This language is so clear and emphatic as to leave nothing for this Court to do but to accept the veracity of the Circuit Court or else to deny that Court's power to determine the matter save "in sound discretion" while expressly not so deciding. The matter was heard practically as a demurrer. Appellees even introduced evidence which it was agreed they might again use on appeal and so the order was left silent as to the evidence introduced. For three days the *merits* were fully and broadly presented and resisted. Surely to admit and then on motion or demurrer to dismiss the appellants would not change the real facts. The trial was upon an oral demurrer in effect. The Court invited a three days argument to test the legal merits. The Court assumed *on the record* to settle and determine "*a legal right*" *on the merits* and "*not as a matter of discretion.*" Appellants relied thereon.

The brief of appellees in the Circuit Court of Appeals clearly showed that appellants were defeated in the Circuit Court on a consideration of the merits, for their argu-

ments in that Court, which we assume will be repeated in this Court, were grounded upon quotations from the opinion of Judge Sanborn printed in full at the opening of this brief. The "essence" of what the Circuit Court did is abundantly manifest, and to forestall all doubt or mistake the Court made the record reject "discretion," decide "legal rights" and allow an appeal.

The same question has arisen in various forms of proceeding, as, for example, applications for *certiorari*, motions and petitions for new trials, motions to quash indictments, certificates of division between Judges of the Circuit Court on motions and petitions for new trials, the general doctrine being that all these rest in the discretion of the Court and therefore present no question for the appellate court. But the exception and distinction upon which we rely has been often and clearly pointed out in all of these various forms of proceedings.

In *Pittsfield Natl. Bank* v. *Bayne*, 140 N. Y., 321, 328, Peckham, J., said:

> "The counsel for the receiver maintains that the order is not appealable to this Court, for the reason that it was a discretionary one with the general term. If this be true, we cannot review the exercise of that discretion, *unless in case of an abuse thereof*, which does not appear. In one aspect the action of the Court is discretionary. It is not legally bound to act when its action is invoked by a mere motion or application for an order of restitution. It may deny that mode of relief and turn the party over to his action. If, however, it retain the application, it must decide upon the facts which are presented to it, and if they show a legal right to demand restitution, and a legal right to the full sum demanded, I apprehend there is then no discretion with the Court to refuse to grant any relief or to grant but a portion of the relief demanded. . . . If the application be wholly denied, and *nothing further appear in the order*, it may very

possibly be that the denial would be regarded as an exercise of discretion vested in the Court, whether to entertain such application or not, and the order of denial might not be appealable. When, however, the application is entertained, and an order for restitution in part is made, if, as a matter of law, the applicant is entitled to restitution of the whole, then the order which refuses it is appealable here." (53 N. E., 632.)

So where, although the Court dismissed the application without passing upon its merits, the order of judgment or dismissal shows upon its face that it was not rendered in exercise of the discretion of the Court, but in a mistaken view of the law as to its jurisdiction or power, it is the proper duty of the appellate court to reverse that decree of dismissal.

Story, J., *Steamboat New England*, 18 Fed. Cas. 53, 56-57.

The same question has also arisen on the right of the judges of the Circuit Court to certify a division of opinion, on a motion for a new trial to the Supreme Court of the United States, the general doctrine being that there can be no such certificate, as such motion usually rests in the discretion of the Court, and therefore presents no question for the determination of the Supreme Court.

United States v. *Rosenberg*, 7 Wall., 580.

But it has been decided by this Court that where on a motion for a new trial a question arises not determinable in the discretion of the Court, that question may be certified to the Supreme Court for its opinion.

United States v. *Thomas*, 151 U. S , 577, 581.

In the case last cited, on a motion for a new trial, there arose a question whether the land on which the murder was committed was within the jurisdiction of the

Federal Courts; and on a certificate of division between the judges of the Circuit Court that question was certified to the Supreme Court.

Fuller, C. J., said:

"It is the general doctrine that there can be no certificate of a division of opinion between the judges of the Circuit Court on a motion for a new trial, as such motion usually rests in the discretion of the Court, and, therefore, properly presents no question for our determination. *United States* v. *Rosenberg*, 7 Wall., 580. But such is not always the case. Sometimes a motion of the kind or of a similar kind may present for consideration a question going directly to the merits, and a decision of which may determine the point in controversy. In such instances the Court will consider the question submitted on a certificate of division between the judges of the court below. Thus in *United States* v. *Wilson*, 7 Pet., 160, the question arose between the judges of the Circuit Court whether a person convicted of a capital offense, who had received a pardon, could derive any advantage from it without bringing the same judicially before the court by bill, motion or otherwise. Upon this question the judges were opposed in opinion, and it was stated under their direction and certified to this Court and we considered and decided. The Court regarded the motion as one going to the merits of the case, having a direct bearing upon the punishment to be imposed, and *not a question determinable in the discretion of the court*, and held that it could properly consider the question upon a certificate of division of opinion of the judges of the Circuit Court. Holding, therefore, that we can consider the question certified, disregarding the irrelevant matter accompanying the certificate, we proceed to its examination." (151 U. S., 581.)

In *Mattox* v. *United States*, 146 U. S., 140, judgment of death was rendered against Mattox for murder. In support of his motion for a new trial certain affidavits

"were offered in open court by the defendant. . . . and by the said district court excluded; to which ruling the defendant, by his counsel, then and there excepted and still excepts." And the defendant excepted to the overruling of his motion for a new trial. The judgment was reversed with directions to grant a new trial.

Fuller, C. J., said:

> "The allowance or refusal of a new trial rests in the sound discretion of the court to which the application is addressed, and the result cannot be made the subject of review by writ of error (cases), but in the case at bar the district court excluded the affidavits, and, in passing upon the motion, did not exercise any discretion in respect of the matters stated therein. Due exception was taken and the question of the admissibility thereby preserved."

In *Haws* v. *Vic. Copper Min. Co.*, 160 U. S., 303, 313, the doctrine with its limitataions is thus stated by Mr. Justice White:

> "The contention that the trial court did not consider the affidavit as to the newly discovered evidence presented for the purpose of obtaining a new trial, is answered by the order refusing a new trial, which recites 'that it was heard upon the record and statement and upon the affidavits filed by the defendants in support of their motion.' This takes the case entirely out of the principle announced in *Mattox* v. *United States*, 146 U. S., 140 (39: 917). *That case involved a refusal to exercise discretion*, whilst the contention here amounts to the assertion of a right to control a discretion when it has been lawfully exercised." (160 U. S., 313.)

In the foregoing we have assumed that the dismissal of the petition of intervention was a matter within the discretion of the Circuit Court, if that Court had so chosen to regard it and act upon it. But a further answer to the question is—

(b)

THAT ON THE FACTS SET FORTH IN THE PETITION ITS DENIAL WAS NOT A MATTER OF DISCRETION.

There are undoubtedly numerous instances in which the granting or denial of an application to intervene *pro interesse suo* is a matter resting in the sound discretion of the court to whom the application is addressed, and from which no appeal or writ of error will lie. But it is respectfully submitted that there are instances, on the other hand, where the right of intervention *pro interesse suo* is from necessity well nigh absolute, and its refusal may be assigned as error. If a party *must* protect his rights in that suit and by intervention, then it must follow that he has a right to intervene.

An illustration may be found in the case of *Freeman* v. *Howe*, 24 How., 460, and subsequent decisions along the same line. In an action against one party the property of another was taken on attachment by the marshal. The Supreme Court of Massachusetts were unanimously of the opinion that the owner could retake the property from the possession of the marshal, because he could not intervene in the action in the Federal Court. But on writ of error to this Court it was held not only that he could intervene in the action in the Federal Court, but that he must if he wanted to secure a return of his property. Well, if he must, then of necessity he has the right; otherwise it lies in the power of the court to deprive a party of property and of justice in the exercise of a mere discretion. That cannot be.

In *Gregory* v. *Pike* (C. C. A. 1st), 67 F. R., 837, 846, the Court of Appeals for the First Circuit, Putnam, J., delivering the opinion, speak of the right of a party to intervene *pro interesse suo* as absolute under the authority of the

decisions of the Supreme Court of the United States. And in that case, as the party had improperly been made defendant and filed a cross-bill, the cross-bill was treated by the court as a petition of intervention *pro interesse suo.*

In *Tenn.* v. *Quintard* (C. C. A. 6th), 80 F. R., 829, 835, an appeal from the dismissal of a petition of intervention was sustained, although the petition was dismissed without passing upon the merits and on the ground that the petition was filed too late. The Court of Appeals say:

> "No other method has been suggested by which the State could have asserted or secured an adjudication of its rights. It is certain that if the State had rested until a confirmation of the sale and payment of the purchase price, and certainly after the property might have passed into the hands of innocent holders, great difficulty would have been found in maintaining its rights, if any, under these contracts. We are clear that the petition was properly and seasonably filed." (80 F. R., 835.)

But a still further and perhaps a more satisfactory answer to the objection is—

(c)

That the decree of dismissal not only shows upon its face that the Circuit Court refused to exercise discretion, but that the Court did, in fact, adjudicate upon the rights of the petitioner, and this adjudication, unless appealed from, would be *res adjudicata* in any other or subsequent proceeding.

The Court surely cannot deprive a party of his rights in the exercise of a mere discretion and without his ever having had a day in court.

And it is important to notice that the discretion which a court exercises on such applications is simply

this: whether it will hear and determine his rights in that proceeding, or whether it will remit him to some other and perhaps more appropriate proceeding.

That this is the discretion which the court exercises was clearly pointed out by Sir James Wigram, V. C., who had occasion in *Empringham* v. *Short*, 3 Hare, 461, to investigate the practice of the court in trying the rights of parties claiming property in the possession of sequestrators, and reached the conclusion that in such cases the court exercised a discretion. He said:

> "Where the case has been considered to admit of no doubt, the court has determined it without further inquiry. In some cases the court has ordered the parties to bring an ejectment; in other cases, where the sequestrator has found a person in possession of property, the court has ordered a writ of assistance to issue, unless the party stipulated to come in and be examined *pro interesse suo. The Court sees what is necessary to be done in order to try a question of right, and it then puts it in the way of trial.*" (3 Hare, 470.)

The same fact is pointed out even more clearly and pointedly by Peckham, J., in *Pittsfield Nat'l Bank* v. *Bayne*, 140 N. Y., 321. He says:

> "In one aspect the action of the Court is discretionary. It is not legally bound to act when its action is invoked by a mere motion or application for an order of restitution. It may deny *that mode of relief* and turn the party over to his action. If, however, it retain the application, it must decide upon the facts which are presented to it, and if they show a legal right to restitution, and a legal right to the full sum demanded, I apprehend there is then no discretion with the Court to refuse to grant any relief, or to grant but a portion of the relief demanded." (140 N. Y., 328.)

It follows, also, we think, that if there is no other action to which the party can be turned over,—if the party must have relief in those proceedings or not at all,—the Court is practically precluded from the exercise of a discretion. And under the last preceding subdivision of this brief we have shown cases where, in the language of Mr. Justice Bradley, leave to intervene "*could not have been properly refused.*"

> *Williams* v. *Morgan*, 111 U. S., 684.
> *Tenn.* v. *Quintard*, 80 F. R., 829, 835.
> *Ante*, subdiv. (*b*) and cases.

So in the case at bar, as appellants sought to save their rights against the then unknown purchaser, there was no other proceeding.

But the point to which we call especial attention is this: When it is said the Court exercises a discretion, that simply means that the Court has a right to say whether it will hear and decide the party's rights in the pending proceeding, or turn him over to his action, if any. *Obviously it cannot do both.* It follows that if the Court would turn a party over to his action, the order of dismissal must not be preceded by a determination upon the merits, and must, in fact, if not so expressed, be without prejudice to his action. In *The Oregon*, 158 U. S., 186, 211, where a party was improperly allowed to intervene and the order of the Circuit Court was reversed by this Court, this Court thought it proper to make an addendum to the decree theretofore entered, to the effect that it should be "without prejudice" to "independent" proceedings by the intervener. If the decree of dismissal is preceded by a determination and denial of the petitioner's rights, his right to resort to his action is cut off and the decree of dismissal is final, and a review of that determin-

ation and denial can only be had on appeal from that decree in that proceeding. It is analogous to the dismissal of a bill in equity. If the Court dismiss the bill without an adjudication upon its merits, and on the ground that the complainant had a plain, adequate and complete remedy at law, the complainant may then avail himself of his remedy at law. But if the dismissal be preceded by a determination and denial of the complainant's rights, then the complainant can no longer resort to his action, and this, too, though the Court might in its discretion have dismissed the bill without an adjudication upon the merits.

There may be this distinction between the dismissal of a bill in equity and that of an intervening petition: the decree of dismissal, according to some authorities, must show on its face that the dismissal of the bill was without prejudice; whereas, in the case of an intervening petition, (in the language of Mr. Justice Peckham), "If the application be wholly denied, and *nothing further appear in the order*, it may very possibly be that the denial would be regarded as an exercise of the discretion vested in the Court, whether to entertain such application or not, and the order of denial might not to be appealable." (140 N. Y., 328.)

But however that may be we need not stop to discuss here; for in the case at bar the order of dismissal, on its face, expressly negatives the exercise of discretion, and shows that it is preceded by a determination and denial of the appellants' rights and proceeds solely from such determination and denial, the order is therefore a final determination of the appellants' rights and appealable within all the authorities. See especially—

People v. *Com'rs, etc., of Brooklyn*, 103 N. Y., 370, and cases.

Further, when property is sequestered in a receivership having in view a sale of the property and a distribution of the proceeds thereof, the right of intervention is not only enlarged, but often made absolute. To relegate a party to an independent action is to trifle with all hope of relief. The purchaser should know whether this easement is organic or destructible by sale. His bid should be honestly invited. Moreover, this purchaser first becomes known in the receivership on foreclosure and at the sale. Our rights are to be saved, not against the old corporation, but against the purchaser, who is known at the sale and not before. The sale creates the purchaser.

It was doubtless a consideration of such necessities as these that led Judge Sanborn to refuse to exercise discretion, if such discretion was open to him, and to dismiss the petition only upon and after a determination and denial of the appellants' rights, and all with the view and purpose of allowing and giving to the appellants an appeal and a review of his determination and denial to the end that the same might be corrected if erroneous, and the appellants awarded relief in these proceedings if found to be so entitled. The intervention was denied by Judge Sanborn under no ordinary tests of intervention. The Court in reality tested the petition as by demurrer on the merits. The appellees even submitted evidence. And the Judge listened to the merits of our contention; for he recognized full well that it was, and should be decided as, a question of rights, and not as one of the place or manner of the assertion thereof. He expressly refused to consider whether we had any action to which we could be remitted, and heard the petition upon the merits and denied our rights. Such determination and denial was final in its nature and appealable.

(d)

The "Ames case," No. 235, was brought on behalf of stockholders and creditors of the Union Pacific Railway Company, and by the very terms of the bill of complaint invited the appellant, also a stockholder and creditor (Rec., 153-4), to come into the case as a party for whose benefit that case was avowedly instituted and prosecuted.

(e)

The "Government case," No. 233, was brought by the United States for the foreclosure of its alleged "subsidy lien." The United States of America also became a party to the "Dexter case," No. 234, brought by the trustees to foreclose an alleged first mortgage on the Union Pacific properties. At the time of the filing of the petition of intervention the "Dexter case," No. 234, and the "Government case," No. 233, were being crowded for final decree. The "Ames case," No. 235, was brought by stockholders and creditors for the appointment of a receiver and the administration of the properties of the Union Pacific Railway Company.

In these two foreclosure cases, Nos. 233 and 234, the "Government case" and the "Dexter case," the United States became a dominant party in Court, avowedly striving for the final decree of foreclosure in each of the cases. The fact that the United States was an actual and active party was thus used against the appellants by the Circuit Court: "There is another ground upon which intervention is sought. It is that these petitioners are members of the public and that they have the right to intervene for the purpose of protecting the interest of the citizens of the Republic. But the answer to that is that the United States by the officer upon whom the duty

is imposed of protecting *in this litigation* the interest of all the citizens *is prosecuting one and defending the other* of the suits for foreclosure."

Inasmuch as the position of the Government in this litigation has been hostile to the rights and interests of the appellants, avowedly so, an exception should be made under which appellants might appear in their own behalf; but we have made the above quotation from the opinion of the Circuit Court for another reason, namely, that the presence of the sovereign government, the United States of America, in these important cases as an active party to the record, made it possible for the appellants to assert their rights in these cases by intervention, and made it practically if not legally impossible for them to assert their rights elsewhere. The United States of America cannot be compelled to become a party complainant or respondent to any litigation. The sovereign cannot thus be compelled to litigate its claims or its rights, and it may safely remain out of Court and silent. But when the United States becomes a party complainant or respondent of record in Court proceedings, it must abide by the same rules and procedure as the other parties to the record to which it has voluntarily submitted itself. The appellants could not, by independent action or otherwise, *compel* the United States to litigate with them the claims herein asserted by them and herein denied by the United States. Because, therefore, of the helplessness of process against the unwilling United States in an independent action, the appellants were practically limited to intervention in these suits to which the United States has voluntarily submitted itself, and intervention thus furnished practically, if not actually, the sole opportunity for the assertion, protection and reservation of the rights and interests of the appellants sought to be desfroyed in

these suits, not more by the bondholding trustees than by the United States itself.

The United States is a persistent party to each of the three cases resisting the intervention and is seeking to evade a consideration of the merits on appeal. (No. 233, pp. 152, 162, 173-4; No. 234, pp. 163, 174, 186-7; No. 235, pp. 157, 169, 170.)

The United States seeks foreclosure to the extinguishment of appellants' rights and servitude. If successful in excluding appellants from intervention, the government cannot be compelled to respond to any independent suit. These liberties of the people should be regarded as above mere technicalities, and the Court should from impulse invite consideration of them.

This consideration practically relieves the order of discretion, and clothes it with essential finality. To hold the order an abuse of discretion even would sustain the appeals.

(f)

The property of the Union Pacific, when this intervention was sought, was in the possession of the receiver of the Federal Court, which made that case (No. 235), the necessary one in which to seek intervention. The trade between the interested parties and the government was made with reference to these three cases, and the sale was sought by all the parties, a sale which Judge Hoadley said to the Court would extinguish all the appellants' rights. It was in these cases that the purchaser through foreclosure sale was to be created, there only was he to be known, and it was against the purchaser so to be created by the sale that appellants desired to preserve and

protect the organic servitude in their behalf,—to preserve the right to a "business" connection.

The very purpose of this sequestration was avowedly a final disposition of all rights, title and assets as completely as though the same constituted a mere fund in Court.

> *Central Trust Co.* v. *Grant Locomotive Works*, 135 U. S., 207.

"To constitute a final judgment, it is not essential that it should be a bar to another suit."

> *Colorado Eastern Ruy. Co.* v. *U. P. Ruy. Co.*, 94 Fed. Rep., 312.

(g)

The Circuit Court of Appeals in wholly refusing to consider the merits of the appeals concurred in the statement that

> "The action of the lower Court in refusing leave to intervene is not receivable on appeal, inasmuch as it rested in the sound discretion of the chancellor to admit or reject the intervention."

Even if it should be conceded, which it is not, that the order rested in the sound discretion of the Circuit Court, still in the very nature of things, that sound discretion is a *judicial* discretion that may be abused, and is, therefore, reviewable on appeal. As this Court has said *in re* Farmers Loan & Trust Company, 129 U. S., 206:

> "The other reason given why the appeal should not be granted is that the action of the Circuit Court in the case is one within its discretion. All we have to say upon this subject is, that if it be an authority vested in the judges of the Circuit Court, it must be exercised and governed by the principles of a judical

discretion, and the very point to be decided upon an appeal here is whether they have such discretion, and whether they exercised it in a manner that cannot be reviewed in this Court. The question is one which in its nature must be a subject of appeal."

II.

On the alleged ground that the appellant is not a party to the suit and so could not appeal from a decree therein:

If the petition of intervention had been denied as a matter of discretion and an appeal had accordingly been refused, and this had been an application for mandamus to compel the Court below to allow an appeal, it may be that mandamus would have been refused.

Ex parte Cutting, 94 U. S., 22.

But that is not this case. The decree expressly negatives discretion and adjudicates upon the rights of the appellants; and although the result of the decision was to dismiss the petition, nevertheless their appeal was allowed and the appellants were to that extent, at least, recognized as parties to the suit.

This same objection was raised and answered in—

Rust v. *United Waterworks Co.* (C. C. A. 8th), 70 F. R., 129, 132-3.
Voorhees v. *Mfg. Co.* (Ind.), 39 N. E., 739.

See also as to appeal—

Tenn. v. *Quintard*, 80 F. R., 829, 835.
Williams v. *Morgan*, 111 U. S., 684.

In *Rust* v. *United Waterworks Co.*, *ubi supra*, the receiver of a corporation against which a judgment had been rendered, by petition to intervene asked to have the

judgment against the corporation opened and for leave to come in and defend the action. From the judgment denying such petition a writ of error was taken to the Court of Appeals, and the defendant in error moved to dismiss that writ of error on the ground, among others, that the plaintiff in error was not a party to the action in which the judgment was rendered against the company and therefore was not entitled to a writ of error to review that judgment.

The Court of Appeals, after reciting this objection, say:

> "But the plaintiff in error was a party *to his own petition* for the vacation of that judgment, and for leave to defend that suit, and the judgment which finally denied him any of that relief. It is the latter judgment which he seeks to review, and that he is entitled to have reviewed by this Court through this writ." (70 F. R., 132-3.)

In *Voorhees* v. *Mfg. Co., ubi supra*, the Supreme Court of Indiana say:

> "It is objected to the right of appeal from the order denying the petition that such petitioner, the rolling mill, was not a party to the action of Voorhees and the appointment of the receiver, because the Court had refused to make it such in the denial of the petition, and hence, being a stranger to the record, it could not appeal. But this contention is based on a misconception of what it is that the rolling mill was appealing from. The record clearly shows that it was not appealing or trying to appeal from Voorhees' judgment against the car company. If it had so appealed, or tried so to appeal, its efforts should have been properly met by a dismissal of such appeal or attempted appeal. It also clearly appears that the rolling mill was not appealing, or attempting to appeal, from the order appointing the receiver. Such an appeal would have been equally unavailing. But the rolling mill was appealing from the action of

the special term on its petition asking to be allowed to intervene in the proceedings resulting in the appointment of the receiver for the alleged purpose of better protecting the interests of itself, a creditor of the car company, together with all other general creditors of the insolvent car company. It can hardly be said that the car company was not a party to its own petition of intervention, or that it was not a party to the order of the special term denying its petition. It was a party to the petition, and order thereon, within the meaning of the law, requiring, as a prerequisite to the right of appeal, that the party invoking such right must be a party to the order or judgment appealed from." (39 N. E., 739-40.)

And even if the petitioner could not appeal from the main decree in the suit, the denial of its petition of intervention, if wrongful, may be made the ground of a reversal of that decree, as was done in

Billings v. *Aspen Min. & Smelt. Co.* (C. C. A. 8th), 51 F. R., 339, 341, 350.

The decree appealed from was one that made a final disposition of the matter presented by the petition and was a final decree.

Rust v. *United Waterworks Co.* (C. C. A. 8th), 70 F. R., 129, 132.
Voorhees v. *Mfg. Co.* (Ind.), 39 N. E., 738, 740.

Respectfully submitted,

JOHN C. COOMBS,

HENRY J. TAYLOR,

Counsel and Solicitors for Appellants.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 233.

THE CREDITS COMMUTATION COMPANY AND THE COMBINATION BRIDGE COMPANY, *Appellants*,

v.

THE UNITED STATES OF AMERICA, ET AL., *Appellees*.

ALSO No. 234. SAME APPELLANTS

v.

F. GORDON DEXTER, ET AL., *Appellees*.

ALSO No. 235. SAME APPELLANTS

v.

OLIVER AMES, SECOND, ET AL., *Appellees*.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF OF APPELLANTS RESISTING MOTIONS TO DISMISS APPEALS OR TO AFFIRM.

STATEMENT.

On the first of this month counsel for the appellants, in each of the above entitled appeals, received by mail appellees' motions in the alternative to dismiss the appeals or to affirm the decree.

Prior to the service of notice of said motion the appellants in each of the above entitled suits had duly filed in this Court their brief of the argument.

Inasmuch as the said brief of appellants upon the merits of the controversies presented by these three appeals covers in the main all the questions presented by these motions to dismiss, we would respectfully ask the Court to consider the said brief of appellants as a brief also in resistance to these several motions. To this should be added the petition itself, a substantial brief under the suggestion of the Circuit Court. Assuming that this request will be granted, and that said petition and brief will be as fully considered upon the issues presented by these several motions of the appellees as though the same had been technically entitled and filed as a brief in resistance thereof, the appellants herewith file this brief in reply to appellees' brief, but only as supplemental to their said original petition and brief heretofore filed, as above stated, upon the merits of these respective appeals.

While each appellant has prosecuted his appeal independently and in form in severalty, as heretofore they may be considered together for convenience, although each appellant desires a declaration of its own rights in the premises.

The appellants contend that they are entitled to a business connection with the Union Pacific Railroad upon "just and equitable terms."

That railroad was built under a series of congressional enactments that made it, as this Court has decided, "*a great national highway* under national control * * * so far as the public and the government were concerned, *as one continuous line.*"

U. S. v. *Stanford*, 161 U. S., 412.
U. S. v. *U. P. Ry. Co.*, 160 U. S., 1.

In return for vast subsidy aid, the national charter imposed upon this "great national highway" important servitudes. It was not then contemplated that another transcontinental line would, for a remote period, or ever, be built. Therefore, this was made a "continuous line" from the Missouri River to the Pacific Ocean. It was burdened with an organic servitude to accommodate other railroads by business connections with this "great national highway" without unjust discrimination. It was intended to induce railroad building from the east so as to share in the business of this national highway. The entire Pacific congressional legislation proves this, and the decisions of this Court only confirm the fact that this great national highway from the Missouri River to the Pacific Ocean was built for the Republic with due regard for all sections thereof. It was contemplated that many railroads would join it but that none would parallel it and that each and all would be protected and benefited by this actual and business connection. The chief magistrate of the Republic was designated to prescribe the "just and equitable terms" of such business connections, and the servitude was intended to endure forever. While all the Pacific legislation must be considered by the Court, we here quote Section 15 of the Act of July 1, 1862 (12 Stat. at L., 489, 496, Chap. 120):

"Sec. 15. And Be It Further Enacted, That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon such just and equitable terms as the President of United States may prescribe. Wherever the word company is used in this act it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto."

The following decision of this Court comments on this section 15, and also quotes an amendment to it:

"By the 12th section, that 'the whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the public and government are concerned, as one connected, continuous line;' and by the 14th section, that the Union Pacific Railroad Company should construct a single line of railroad and telegraph from the western boundary of Iowa, at a point to be designated by the President, so as to form a connection with that company's line on the said one hundredth meridian of longitude, upon the same terms and conditions prescribed 'for the construction of said railroad and telegraph first mentioned;' and whenever a railroad was constructed through Minnesota or Iowa to Sioux City, then the above company should construct a railroad and telegraph line from Sioux City to connect with the Union Pacific Railroad.

"The 15th section declared that any company then or thereafter incorporated should have the right to connect its road with the road and branches provided by the act, at such places and upon such terms as the President might prescribe. But by an act of congress, passed June 20, 1874 (18 Stat. at L. 111, Chap. 331), the following addition was made to this section of the act of July 1, 1862 (12 Stat. at L. 489, 496, Chap. 120):

> 'And any officer or agent of the companies authorized to construct the aforesaid roads, or of any company engaged in operating either of said roads, who shall refuse to operate and use the road or telegraph under his control, or which he is engaged in operating for all purposes of communication, travel, and transportation, so far as the public and the government are concerned, as one continuous line, or shall refuse, in such operation and use, to afford and secure to each of said roads equal advantages and facilities as to rates, time, or transportation, without any discrimination of any kind in favor of, or adverse to, the road or business of any or either of said com-

panies, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding $1,000, and may be imprisoned not less than six months; . . . and it is hereby provided that for all the purposes of said act, and of the acts amendatory thereof, the railway of the Denver Pacific Railway and Telegraph Company shall be deemed and taken to be a part and extension of the road of the Kansas Pacific Railroad, to the point of junction thereof with the road of the Union Pacific Railroad Company at Cheyenne, as provided in the act of March 3, 1869.' "

U. S. v. *Union Pacific R. Co.*, 160 U. S., 23, 24.

Section 15 of the Act of July 2, 1864, is also pertinent:

"Sec. 15. And Be It Further Enacted, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and the government are concerned, as one continuous line; and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others."

I.

EVEN IF THE DECREE OR ORDER APPEALED FROM WAS WITHIN THE DISCRETION OF THE CIRCUIT COURT AND AN EXERCISE THEREOF, AS APPELLEES CONTEND, NEVERTHELESS THE SAME WOULD REMAIN REVIEWABLE ON APPEAL.

If the order rested and was exercised in the discretion of the Circuit Court, such discretion is judicial and

not arbitrary, and the Court may abuse its judicial discretion, and, therefore, the same is reviewable on appeal. As this Court has said, *ex parte Farmers Loan & Trust Company*, 129 U. S., 206:

"The other reason given why the appeal should not be granted is that the action of the Circuit Court in the case is one within its discretion. All we have to say upon this subject is, that if it be an authority vested in the judges of the Circuit Court, it must be exercised and governed by the principles of a judicial discretion, and the very point to be decided upon an appeal here is whether they have such discretion, and whether they exercised it in a manner that cannot be reviewed in this Court. The question is one which in its nature must be a subject of appeal."

II.

THE DECREE OF THE CIRCUIT COURT OF APPEALS WAS FINAL.

The Circuit Court of Appeals disregarded the merits of the questions involved, and dismissed the appeals upon two grounds: because the decree appealed from was believed to be one made in the discretion of the Circuit Court, and because the same was held to lack finality. From that decree of dismissal of the Circuit Court of Appeals, these appeals to this Court have been taken. In the multitude of counsel for appellees not one has suggested to this Court that said decree of dismissal by the Circuit Court of Appeals was not a final decree. It is manifest that said dismissal possessed all the elements of finality, and, therefore, is reviewable on the merits in this Court on appeal.

III.

THE DECREE OF THE CIRCUIT COURT APPEALED FROM SHOWS UPON ITS FACE THAT THE CIRCUIT COURT REFUSED TO EXERCISE DISCRETION AND DID ADJUDICATE UPON THE MERITS AND LAW QUESTIONS, AND THE DECISION, THEREFORE, PRESENTS QUESTIONS PROPERLY REVIEWABLE ON APPEAL.

The assailed order of the Circuit Court reads:

"Ordered, that the prayers of the petitioners for leave to intervene herein be and the same are hereby denied, *not as a matter of discretion*, but because said petitions *do not state facts* sufficient to show that the petitioners, or either of them, have a *legal right* to intervene, and upon prayer of the petitioners an appeal to the Circuit Court of Appeals is allowed."

This language is so clear and emphatic as to leave nothing for this Court to do but to accept the veracity of the Circuit Court. The matter was heard practically as on demurrer. Appellees even *introduced evidence* which it was agreed they might again use on appeal, and so the order was left silent as to the evidence introduced. For three days *the merits* were fully and broadly presented and resisted. Surely to admit and then on motion or demurrer to dismiss the appellants would not change the real facts—the essence of what was done. The trial was upon an oral demurrer in effect. The Court invited a three days' argument to test *the legal merits*. The Court assumed *on the record* to settle and determine "*a legal right*" *on the merits* and "*not as a matter of discretion*." Appellants relied thereon.

IV.

THE DECREE OF THE CIRCUIT COURT NOT ONLY SHOWS UPON ITS FACE THAT SAID COURT REFUSED TO EXERCISE DISCRETION, BUT ALSO SHOWS THAT SAID COURT DID ADJUDICATE THE RIGHTS OF THE PETITIONERS, BEING THE APPELLANTS HEREIN.

Said Court did hear and determine the legal rights of the appellants. *The assailed decree so declares.* The Circuit Court could not and did not assume to determine the legal rights of the appellants and thereafter to exercise a discretion in turning the petitioners over to some other form of action. *Manifestly the Court could not do both,* and it contented itself with determining the legal rights of the petitioners, and in order to conclude the appellees from the position that said determination was a mere exercise of judicial discretion, the Court expressly negatives the basis of said contention in order that the very essence of what the Circuit Court did might be known to, and reviewed by, the proper appellate tribunals.

Haws v. *Vic. Copper Min. Co.*, 160 U. S., 303, 313.

Pittsfield Nat. Bank v. *Bayne*, 140 N. Y., 321, 328.

Even if the Circuit Court had the choice of a refusal under discretion or a determination upon the merits, said Court did not assume to do both, but on the record refused to dismiss the appellants as a matter of discretion, and did dismiss them as a matter of adjudication upon the merits. Whether the appellants could have

been relegated to an independent action, without an abuse of the Court's discretion, may or may not be here presented to this Court, and is not so presented if our contention is correct that the Circuit Court in its choice entered this decree upon the single chosen basis of an adjudication of the legal right of the petitioners, expressly negativing the exercise of judicial discretion.

People v. *Commissioners*, 103 N. Y., 370.

V.

APPELLANTS WERE INVITED TO BECOME PARTIES.

The Ames case, No. 235, was brought on behalf of the stockholders and creditors of the Union Pacific Railway Company, and by the very terms of the bill of complaint itself *invited* the appellant, also a stockholder and creditor (R., 153-4), to come into the case as a party for whose benefit that case was avowedly instituted and prosecuted. The appellants *accepted* the invitation and should have been permitted to remain in a case where their interests were only *mis*represented and selected for extinguishment.

VI.

ONLY IN THESE SUITS HAD THE GOVERNMENT PERMITTED A LITIGATION OF THESE SERVITUDES AND LIBERTIES.

In the two foreclosure cases, the "Government case," No. 233, and the "Dexter case," No. 234, the United States was already a party litigant, prosecuting one and defending the other of said suits for foreclosure. Inasmuch as the position of the Government has always been hostile

to the rights and interests of these appellants, *avowedly so*, an exception, if necessary, should be made under which appellants might appear in their own behalf, for they had no representatives among existing parties.

The record further shows that the United States of America in these two important foreclosure cases was an active party to the record, seeking the disposition and sale of all these Union Pacific properties, and seeking, if possible, to include therein the right and liberties of the public, including these appellants. As the controversy was not less with the Government than with the other parties in the respective suits, this was not a case in which the petitioners could be relegated to an independent suit without manifest prejudice, if not defeat, of their rights. The United States of America cannot be *compelled* to become a party complainant or respondent to any litigation. The sovereign cannot thus be compelled to litigate its claims or its rights, and it may safely remain out of Court and silent. But when the United States *voluntarily* becomes a party complainant or respondent of record in Court proceedings it must abide by the same rules and procedure as other parties to the record to which it has thus voluntarily submitted itself. The appellants could not by independent action, or otherwise, compel the United States to litigate with them the claims herein asserted by them, and herein denied by the United States. Because, therefore, of the helplessness of process against the unwilling United States in an independent action, the appellants were practically limited to intervention in these very suits to which the United States had thus voluntarily submitted itself, and intervention thus furnished practically, if not actually, the sole opportunity for the reasonable and lawful assertion,

protection and reservation of the rights, interests and liberties of the appellants sought to be destroyed in these suits, not more by the bondholders' trustees than by the United States itself. The United States is a persistent party to each of the three cases resisting the intervention and is seeking to evade a consideration of the merits on appeal. (No. 233, pp. 152, 162, 173-4; No. 234, pp. 163, 174, 186-7; No. 235, pp. 157, 169, 170.)

The United States seeks the extinguishment of appellants' rights and servitude. If successful in excluding appellants from intervention, the Government cannot be compelled to respond to any independent suit. These liberties of the people should be regarded as above mere technicalities, and the Court should from impulse invite consideration of them.

This consideration results in the conclusion that these petitioners had no adequate relief by any other or independent proceedings, and adds to their contention that the assailed order was final in its essence and its practical results.

VII.

THE FEDERAL COURT THROUGH ITS RECEIVERS, POSSESSED THE UNION PACIFIC PROPERTIES.

The properties of the Union Pacific when this intervention was sought were in the possession of the receiver of the said Federal Court for the manifest and express purpose of final disposition under these foreclosure suits. The record shows the trade into which the interested parties and the Government had entered. The sale had been agreed upon, and the Government's counsel said

that sale would extinguish the appellants' rights. It was in these foreclosure cases that the purchaser was to be found, created, first made known, and it was against the purchaser that the appellants desired to preserve and protect the servitude in their behalf—to preserve a right to a business connection with the Union Pacific Railway properties under the congressional legislation to that end, and more particularly under Section 15 of the Act of July 1, 1862, which reads as follows:

"That any other railroad company now incorporated or hereafter to be incorporated shall have the right to connect their road with the road and branches provided for by this act at such places and upon such *just and equitable terms* as the President of the United States may prescribe. Wherever the word company is used in this act, it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto." See also the amendment to this, quoted *supra* from 160 U. S., 23-4 (18 Stat. at L. 111, Chap. 331.)

VIII.

THE UNITED STATES CANNOT EXCLUDE PARTIES.

The United States asks a dismissal, because it says that it "has never consented that such proceedings be brought against it, but has objected and still does object to the same." The record shows no such objection in the Circuit Court. This objection was never made nor even suggested until the motion in the Circuit Court of Appeals. That is too late. The objection, however, even if made in the Circuit Court, would have been unavailing. As Judge Sanborn says: "The United States is prosecuting one and defending the other of the suits for foreclosure." Having voluntarily made itself a party complainant in suit No. 233 to prosecute one foreclosure, and

a party respondent in No. 234 to defend against another foreclosure, the Government submitted itself to the litigation, and could not use its sovereignty to exclude either parties or issues. In the Circuit Court no such reason was ever given nor even suggested, nor indeed is such a proposition argued in this Court in any of the briefs submitted upon these motions. It may therefore be passed as waived.

The order of Judge Sanborn recognizes the petitioners as parties to their own petition and the determination thereof, and ordered notice "to said parties respondent" to "show cause" (No. 233, p. 141; No. 234, p. 151; No. 235, p. 145), and further recognizes the petitioners as parties by saying in the decree that "upon prayer of the petitioners an appeal to the Circuit Court of Appeals is hereby allowed" (No. 233, pp. 153, 157; No. 234, pp. 163, 168; No. 235, pp. 157, 164), and the respondents are named by Judge Sanborn as the "appellees" in his citation (No. 233, p. 158; No. 234, p. 170; No. 235, p. 165). All the "appellees" to this citation entered a general appearance to each appeal (No. 233, pp. 162, 174; No. 234, pp. 171, 187; No. 235, pp. 166, 176), and admitted "personal service" of this citation upon them as parties and appellees. The petitioners were certainly parties to their own petition of intervention, and to the Court's order upon the same, and the respondent appellees were also very active parties to the same proceedings. The appellants do not seek to appeal from the decree of foreclosure, because they assume that the order appealed from excluded them from this right, and it is from this final and excluding order that their appeals have been allowed and consummated.

Voorhees v. *Mnfg. Co.*, 29 N. E. R., 738, 740.

Rust v. *United Water Works Co.*, 70 Fed. Rep., 129, 132.

IX.

APPELLANTS ARE ENTITLED TO A DETERMINATION.

The United States does not argue, but in its motion suggests, that the success of these appeals cannot now aid the appellants. The other parties to this appeal do not even mention this proposition, and the Government does not argue it. The Attorney General says in his brief that the purchaser at the foreclosure sales, under the decrees, which he says are exhibited by him to this Court by certified copy (p. 9), took all these Union Pacific properties "subject to ample protection in the decrees of all rights of the government in all other capacities than that of creditor, as to which (as creditor) its rights were fully satisfied."

If this reservation in the decrees saves appellants' rights against the purchasers, then the reason for the failure to argue the point on the part of all appellees, and the failure to even mention it on the part of all except the Government, become manifest. The other parties have not concurred in this statement of the Attorney General nor made any reference whatever to it. The decree for foreclosure contains, among others, this reservation: "all the rights of the complainant, the United States, not disposed of by this decree are hereby reserved to them."

The appellants desired a saving clause in the decree, and their original brief herein shows that it was the Attorney General through his special counsel that prevented such a clause from at once going into the decree.

Whether the rights of the appellants have been saved in the decree against the purchaser is a question that exceedingly troubles the appellants, and the purchasers have not yet admitted it. The appellants are indeed desirous of learning from this Court whether such is the fact or not, and even more desirous of knowing whether the liberties and rights sought by these appellants are of the nature of an organic servitude which could not be cut out nor defeated by these foreclosure proceedings, nor by a hostile Government.

The record shows that among the respondents to appellants' petition were the representatives of the reorganization committee and of the purchasers of the Union Pacific properties, and Judge Sanborn (No. 233, p. 145) required service upon the reorganization committee, and his order finds that the service was duly made, and yet on the hearing the Government said that the rights and liberties of the appellants would be *extinguished by the sale*, while Judge Dillon referred to said rights as an *organic servitude* which would survive any foreclosure sale, and the appellants pray a declaration of this Court upon this question of the liberties of the people under the Union Pacific legislation. The interest of the Republic in a large and commanding way is involved.

On this question of right and interest, the appellants submit that they are somewhat sustained in the right of intervention by the special legislation of congress in respect of these Pacific roads.

Section 10 of the Thurman Act (Act of May 7, 1878) provides as follows:

"Sec. 10. That it is hereby made the duty of the Attorney General of the United States to enforce, by proper proceedings against the several railroad companies re-

spectively or jointly, or against either of them, and others, all the rights of the United States under this act and under the acts hereinbefore mentioned, and under any other act of congress or right of the United States; and in any suit or proceedings already commenced, or that may be hereafter commenced against any of said companies, either alone or with other parties, in respect of matters arising under this act, or under the acts or rights hereinbefore mentioned or referred to, it shall be the duty of the Court to determine the very right of the matter without regard to matters of form, joinder of parties, multifariousness, or other matters not affecting the substantial rights and duties arising out of the matters and acts hereinbefore stated and referred to."

This section, in spirit, certainly covers intervention on a claim of right and interest, because it eliminates all objection on account of multifariousness, which is perhaps the only ground for a discretionary denial of intervention.

X.

ONLY AS A CREDITOR IS THE CLAIM OF THE UNITED STATES SATISFIED.

The Attorney General suggests to the Court (p. 9) that the Government *as a creditor* has been paid in full, and that the Union Pacific properties have been "long since transferred to the purchasers *subject to ample protection in the decrees of all rights of the Government in all other capacities.*"

This seems to us an added reason in favor of sustaining these appeals, and of sustaining the contention of the intervening petitioners, for if the payment to the Government as a creditor has been made in full it may possibly be held to have affected the rights asserted by

the appellants to have the President of the United States as an arbiter of the "just and equitable terms" under which their railroads may have a business connection with the Union Pacific system, but would still not actually deprive the appellants of the benefit of Section 15, of the Act of July 1, 1862 (12 Stat. 489, C. 120), for the Court, having the controversy and the parties before it, would go on and decide the entire matter, and itself fix the just and equitable terms of the business connection, and such is the prayer of the petition.

Joy v. *St. Louis*, 138 U. S., 1.
U. S. v. *U. P. Ry. Co.*, 160 U. S., 50-1.

XI.

THE RIGHTS AND LIBERTIES OF THE APPELLANTS SOUGHT TO BE PRESERVED BY THEIR PETITION MADE INTERVENTION BOTH PROPER AND NECESSARY.

This matter is presented and argued in the original brief of appellants filed herein, to which the attention of the Court is respectively directed, and it is asked that the same be considered by the Court as though incorporated into this reply brief.

In each of the transcripts of record will be found a further discussion of the question, which is the same in each case, and to which the attention of the Court is likewise invited (No. 233, pp. 43-148; No. 234, pp. 53-158; No. 235, pp. 47-152). Assuming that the Court will adopt these references as a part of appellants' argument in resistance to the motion of appellees, only a brief reference to these matters will now be made.

Appellants seek the benefit of Section 15 of the Act of July 1, 1862. One of the appellants is a railway corpo-

ration, having already expended a million and a half dollars, and the other complainant represents an expenditure of nearly ten millions of dollars, all dependent upon or having in express contemplation a business connection with the Union Pacific Railway system.

Said Section 15 reads thus:

"That any other railroad company now incorporated or hereafter to be incorporated shall have the right to connect their road with the road and branches provided for by this act at such places and upon such just and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act it shall be construed to embrace the words their associates, successors, and assigns, the same as if the words had been properly added thereto." (12 Stat. 489, C. 120.)

In each of the suits this allegation appears (No. 233, p. 149; No. 234, p. 159; No. 235, p. 153):

"Said combination bridge was built for the purpose, among others, of securing connection with the Union Pacific Railroad as herein sought; and to that end received a vote of public aid from the city of Sioux City in the sum of about $300,000, and in the articles of incorporation of the aforesaid Combination Bridge Company, said company is empowered to construct, own and operate railways in the states of Iowa and Nebraska; and your petitioner brings this petition in behalf of said bridge company, as well as itself, and purposes and intends to amend in so far as may be necessary, if at all, its own articles of association so as to enable it to incorporate or cause to be incorporated such railroad company or companies as may be necessary to construct, operate and maintain such connecting railroads from its properties aforesaid with the Union Pacific Railroad as may be secured to your petitioner in pursuance of this intervention."

And the following further appears (No. 233, p. 151; No. 234, p. 161; No. 235, p. 155):

"Your petitioner, The Combination Bridge Company, a corporation duly created and organized under the laws of the state of Iowa, having filed with the secretary of the state of Nebraska a true copy of its charter or articles of association and a certified copy of the resolution adopted by its board of directors accepting the provisions of the Nebraska law making foreign corporation domestic, and duly becoming a body corporate also of the state of Nebraska, respectfully prays this honorable court to be permitted to intervene on its own behalf in the above entitled causes, but in subordination to the intervention of the Credits Commutation Company therein, and especially to intervene should the prayer of the Credits Commutation Company therein on its own behalf be not allowed, or should this petitioner, by reason of standing or otherwise, be found the better entitled so to do, by reason of having built a railroad bridge over the Missouri River from Sioux City, Iowa, to Nebraska, under corporate authority, and with the purpose of securing, as a continuation thereof, railroad connection with the Union Pacific Railroad under rights and privileges of existing laws of the United States, or for any other reason.

"Your petitioner, on behalf of itself, reaffirms and realleges herein all the statements and allegations made by the Credits Commutation Company in its petition as amended herein to intervene, as completely as therein stated and with the same force and effect as if herein fully set forth, including all the prayers thereof."

(See also No. 233, pp. 44-6; No. 234, pp. 54-6; No. 235, pp. 48-50.)

The appellants, therefore, represent some ten millions of dollars expended in extensive industries dependent upon railway facilities, and in part at least, with a view to, and the express purpose of, a connection with the Union Pacific Railroad system: The bridge across the Missouri River, itself costing a million and a half dol-

lars, was projected and built by said Combination Bridge Company, "under corporate authority, and with the purpose of securing as a continuation thereof railroad connection with the Union Pacific Railroad under rights and privileges of existing laws of the United States," not to mention the railroad running one hundred thirty miles west from Sioux City to O'Neill. The interest of the Credits Commutation Company in the Sioux City, O'Neill and Western Railroad, running 130 miles from Sioux City towards a suitable connection with the Union Pacific system, ought to be a sufficient evidence of its good faith (No. 233, p. 44; No. 234, p. 54; No. 235, p. 48).

The combination bridge over the Missouri River is itself a railroad bridge and a *railroad*, as shown expressly by the allegations of its petition of intervention and confirmed by the decision of this Court.

Ry. Co. v. *Bridge Co.*, 131 U. S., 371.

It is submitted that the appellants make the largest bid of wish and ability that was ever offered in the west for a right to participate in a public liberty and public benefit.

This Court has considered the Union Pacific legislation and the corresponding obligations and servitudes imposed thereby.

U. P. Ry. Co., v. *Hall*, 91 U. S., 343.

Counsel for appellees admitted that a railroad under the laws of Nebraska or the Interstate Commerce Act, or possibly the very section in controversy, might be entitled to "mechanical union," and the spiking together of rails at a switch, but deny the right of the President under the section above quoted to grant any "just and equitable terms" for a *business* connection. A merely me-

chanical connection would be unavailing. The law contemplates a connection of business with business as well as rail with rail. *The President of the United States is chosen for a larger purpose than the spiking together of iron rails on "just and equitable terms."*

It is submitted that a mere mechanical connection is not what the congress and the people had in contemplation when, under enormous bounties, there was created "A GREAT NATIONAL HIGHWAY UNDER NATIONAL CONTROL, * * * so far as the public and the government were concerned, AS ONE CONTINUOUS LINE," from the Missouri River to the Pacific Ocean.

U. S. v. *Stanford*, 161 U. S., 412.
U. S. v. *U. P. Ry. Co.*, 160 U. S., 1.

There is a liberty of the people to apply to the President, a right in them to have his judgment, and power to have it enforced in court, all bought by and for and paid for by the people. THESE—THEIR LIBERTIES, RIGHTS, AND POWERS, AND OTHERS LIKE THEM SECURED TO THE PEOPLE—ARE NOT TREASURY ASSETS; they are not for sale at public auction—not to anybody, even an alien corporation, if it would bid the most.

The obligations and servitudes imposed upon the property that secure these are not due to the United States as such, but to the contrary and if necessary to the monetary loss of the United States. They are due to *these appellants* and to others who, as the appellants in fact, *may have made even vast expenditures in reliance upon these obligations and servitudes and in the enterprise which such promised benefits invited.* (No. 233, pp. 149-151; No. 234, pp. 159-161; No. 235, pp. 153-155.)

Let the United States sell, if it can and will, what belongs to the United States *as such;* let it not enhance the price by adding something which does not belong to it but to the appellants.

Beyond the price of that which pertains to the United States *as such*, the money consideration is no more the concern of the Court which fixed the bid than it was of the executive that secured it, and it was no concern of either. The question is broader than the mere collection of a debt.

U. S. v. *Union Pacific Ry.*, 160 U. S., 1.

The comprehensive scheme of this great national highway and the liberties secured to the people through land grants, bond subsidies and other concessions, have been recognized by this Court in many of its decisions.

U. P. Ry. Co. v. *Hall*, 91 U. S., 343.
U. S. v. *U. P. Ry. Co.*, 160 U. S., 1.
U. S. v. *Stanford*, 161 U. S., 412.

All the just and equitable terms which the petitioners sought in the connection to which they are entitled under Section 15 of the Act of July 1, 1862, were those intended to be secured to the Sioux City branch as well as to the other branches under Section 15 of the Acts of 1864, which reads:

"Sec. 15. And be it further enacted, That the several companies authorized to construct the aforesaid roads are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, *so far as the public* and the government are concerned, *as one continuous line;* and, in such operation and use, to afford and secure to each equal advantages and facilities as to rates, time and transportation without any discrimination of any kind in favor of

the road *or business* of any or either of said companies, or adverse to the road *or business* of any or either of the others." See also 12 Stat., 489, 496, C. 120, quoted in 160 U. S., 1.

The appellants cannot be charged with delay. The rights for which they contend are vital. They have railroad, bridge and terminal properties in and entering Sioux City, and large stock yards and packing plants, which draw their supplies from all the territories occupied by the Union Pacific Railroads. All these cost ten millions of dollars, and the transportation properties were designed, acquired and constructed to accommodate and all depend upon some southwestern and transcontinental railroad connection. They believe they are entitled to this business connection with the Union Pacific properties upon "just and equitable terms." They are in deadly earnest and sincerely hope that the rights and liberties granted under the Union Pacific legislation are available to such beneficiaries thereof as the appellants herein, or either of them, and that their appeals will be heard. These appeals involve liberties of the Republic.

Respectfully submitted,

JOHN C. COOMBS,
HENRY J. TAYLOR,
Counsel and Solicitors for Appellants.

In the

Supreme Court of the United States,

October Term, 1900.

No. [illegible].

The [illegible] Commutation Company and the Combination Bridge Company, Appellants,

v.

The United States of America et al., Appellees.

Also No. [illegible].

[illegible] Appellants

v.

F. Coolbaugh Brown and Oliver Ames, Second, Trustees, et al., Appellees.

Also No. [illegible].

[illegible] Appellants

v.

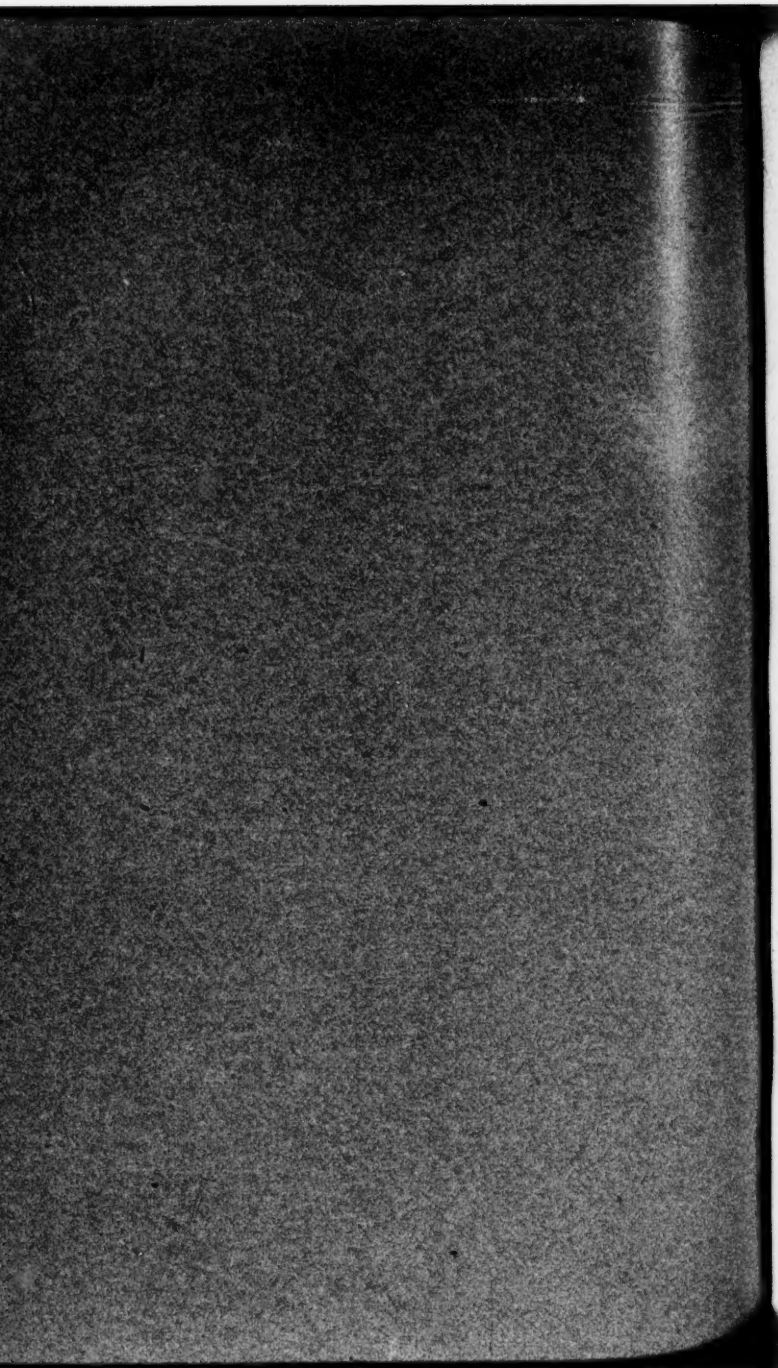
Oliver Ames, Second, and Samuel Carr, Executors, etc., et al., Appellees.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR APPELLANTS RESISTING MOTIONS OF APPELLEES TO DISMISS APPEALS.

JOHN C. COOMBS,
HENRY J. TAYLOR,
Counsel for Credits Commutation Company and Combination Bridge Company, *Appellants.*

BOSTON:
ALFRED MUDGE & SON, LAW PRINTERS.



upreme Court of the United States,

OCTOBER TERM, 1899.

233.

THE CREDITS COMMUTATION COMPANY AND THE COMBINATION BRIDGE COMPANY, *Appellants*,

against

UNITED STATES OF AMERICA ET AL., *Appellees*.

234.

SAME APPELLANTS

against

GORDON DEXTER AND OLIVER AMES, SECOND, ET AL. *Appellees*.

235.

SAME APPELLANTS

against

IVER AMES, SECOND, AND SAMUEL CARR, EXECUTORS, ET AL., *Appellees*.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE EIGHTH CIRCUIT.

RIEF FOR APPELLANTS RESISTING MOTIONS OF APPELLEES TO DISMISS THE ABOVE-ENTITLED APPEALS.

Distance and illness have prevented consultation by counsel for e appellants in assembling a brief to meet the appellees' motion, d senior counsel asks leave to supplement the main brief.

Appellants' Statement.

The petitions were brought to protect and avail of rights thought to be secured to the petitioners to build a railroad southwest from Sioux City, to make a track and business connection with the Union Pacific Railroad, under Section 15 of the Act of Congress of July 1, 1862, (creating the Pacific Railroads Companies) which reads as follows: —

> Sect. 15. "That any railroad company now incorporated or hereafter to be incorporated shall have the right to connect their railroad with the road and branches provided for by this act at such places and upon such just and equitable terms as the president of the United States may prescribe. Wherever the word 'company' is used in this act, it shall be construed to embrace the words — their associates, successors and assigns — the same as if the words had been properly added thereto."

The petitioners want to make such a connection.

Simple good-faith interest is or should be essential to every petition for intervention, and so we think it pertinent to add: —

The petitioners and their predecessors expended between eight and ten millions of dollars in railroads, bridges, and terminals, in and extending into Sioux City, Iowa, all adapted to find their most profitable and efficient use in such connection as is herein sought. Especially has the Combination Bridge Company, petitioner herein, made such expenditure, to the amount of about a million and a quarter dollars, to bridge the Missouri, at Sioux City — mainly in reliance upon a hope and expectation of such connection.

These properties are not worth half as much without the connection as they would be with it.

The bridge connects with three great systems on the east of the river, only one of which crosses the Missouri River north of the Union Pacific Road, and that one only in the far north. A short track from the bridge would connect all these systems with the Union Pacific.

Substantially all of the stock of the Bridge Company is owned by its associate petitioner herein, the Credits Commutation Company, which last-named company also owns a majority interest in and

controls the Sioux City stock yards, which, with the large plants upon it, is the location of one of the great packing centres of the country. It is by far the largest industry in Sioux City, and there are but few, if any, that exceed it in importance in the whole Middle Northwest. To serve the trans-Missouri country, and the public generally, and to best serve itself, the stock yards should draw its live stock from the trunk and every ramification of the whole Pacific railroads systems.

These petitioners, Sioux City and the Middle Northwest, should enjoy all rights and facilities in the Pacific roads, freely and in competition with Kansas City and Omaha and other lesser packing centres on the north and south trend of the Missouri River between Kansas City and Sioux City.

It was so intended. This stretch of the Missouri River was to be the eastern base of the Pacific railroads through line, which single trunk, starting at the one-hundredth meridian (about where North Platte is now), should rest on three divergent branches, extending to the river at the three cities above named, as on a tripod.

This stretch of the river was foreseen to be, and for imperative natural reasons as well as from the Acts of Congress it is and always will be, a base line, not only for direct, but the principal one for all divergent and convergent, transcontinental or nearly transcontinental, transportation.

In the original Pacific acts, it was contemplated, that the Sioux City branch, projected from the original initial point of the main line of the Union Pacific at the one-hundredth meridian, would pass through Minneapolis and St. Paul to accommodate the middle northwestern country and lake transportation at Duluth, the most inland point.

The Kansas City branch, in like manner projected, was to accommodate the southeastern country and meet Gulf transportation at New Orleans; and the Omaha branch extended would accommodate the middle interior and the all-overland haul to the Atlantic.

The comprehensive scheme was recognized, and, in effect, practically declared as a fact judicially found by the Supreme Court.

U. P. R. R. Co. v. *Hall*, 91 U. S. 343.

U. S. v. *U. P. Ry. Co.*, 160 U. S. 1.

U. S. v. *Stanford*, 161 U. S. 412.

The plan in the original act was somewhat modified in the Act of July 2, 1864 — the so-called "Subsidy Act"; but the geography on which the plan rested, and the wisdom of the plan, were not changed.

Neither, indeed, was the purpose of the original act abandoned by the Act of 1864, and equal and impartial treatment in business, as well as connection, was secured to the Sioux City branch without adverse discrimination in favor of the other two, for it was still provided: —

> "SECT. 15. And be it further enacted, that the several companies authorized to construct the aforesaid road are hereby required to operate and use said roads and telegraph for all purposes of communication, travel and transportation, so far as the public and the government are concerned, as one continuous line; and in such operation and use to afford and secure to each equal advantages and facilities as to rates, time and transportation, without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others."

The Sioux City branch of the Union Pacific provided for in these acts was evidently mislocated, and sanction for such mislocation was secured by misrepresentation made to the government. The road, as built, ran over seventy miles in a southeasterly direction down the east bank of the Missouri River to a junction with a part of the Chicago & Northwestern system, and thence turning west took that system across the Missouri River to Fremont. This branch from Sioux City to Fremont was one hundred and two miles long, and in its completion had reached a point on its way to the Pacific about two miles west of Sioux City.

The result was that the branch became a part of the Chicago & Northwestern Railroad. And another result of this wrongful mislocation, clearly shown on any railroad map, is an exception to our remarkable railroad development and extension during the past thirty years; an exception that cannot be paralleled elsewhere in the country.

Thus, besides the bridge of your petitioner, the Combination Bridge Company, there are only two bridges across the Missouri River from Omaha to the far north, one at Sioux City and one south of it at Blair, both controlled and in effect owned by the Chicago

& Northwestern system. There is no bridge from Sioux City to Bismarck.

There are three or four great systems other than the Chicago & Northwestern that come into Sioux City from the north and east, not one of which has crossed the Missouri or ever laid a foot of rail north of the Union Pacific Railroad. They have stopped, by force of artificial barriers, at the Missouri as at a Chinese wall.

All that the Chicago & Northwestern Company itself has built is laid herring-bone fashion, to side-track, as it were, or to exclude Sioux City and the Middle Northwest from connection with Union Pacific for transcontinental business.

The railroads of the Middle Northwest, twenty or thirty thousand miles of them, are and always have been with only one ostensible connection and without any practical connection with this great government-built transcontinental system of the Pacific roads; all to the undue advantage of Omaha, and of the Chicago & Northwestern Road and of the all-overland haul of Western products to the East. These discriminations against the northwestern country and the evils thereof were the result of the original mislocation, and it was for their correction that most of the petitioners' enterprises were designed and built.

The petitioner's bridge, already built, and a short track to the Union Pacific, when the place and terms of connection may be had, will take all the northwestern systems alike to the Union Pacific Road. The only barrier that now prevents is a denial of the rights to connection "on just and equitable terms," which terms, we shall submit, should be such as were secured to a Sioux City connection as well as to the other branches, "without any discrimination of any kind in favor of the road or business of any or either of said companies, or adverse to the road or business of any or either of the others."

This contention is so just and fair that the judge of the Circuit Court did not have the heart willingly to resist it, and after the petitioners had practically concluded their argument for connection, and before they offered any argument that the bond-aided Pacific railroads could not be sold separately in foreclosure, the judge interrupted.

Leave is asked of the appellees to quote from them and from the Court at the hearing: —

"Judge SANBORN. Perhaps, Mr. Coombs, the counsel on the other side would be willing to concede that there should be such a provision in the decree. How is that, Mr. Pierce?

Mr. PIERCE. It is the law now, if your Honor please, the most ample and complete provisions for connection.

Judge SANBORN. But the question is whether you are willing that there should be inserted in the decree the same provision.

Mr. PIERCE. The provision, *as I understand*, your Honor, for *mechanical* connection with the property, that is the construction which has been given by the Supreme Court to provisions in sections for connections of this character, the *mechanical union* of the property. I do not think there would be any objection —

Mr. HOADLEY (*for the government*). This is not the time now. If the Court please, when Judge Cornish comes to the hearing, there will be a good deal to be said about —

Judge SANBORN. There will be, but if you are willing that this question should be inserted in this decree, it is unnecessary to further argue the matter.

Mr. HOADLEY. I don't believe I am willing to put in anything that would satisfy Mr. Coombs. I know him too well for that. If you concede one thing he wants, he wants another. I don't mean anything against my friend Coombs.

Judge SANBORN. Mr. Coombs, you may proceed."

Then, and not before, the petitioners submitted their argument that the road could not be sold under the pending bills.

The evils which the petitioners sought to correct were due to the mislocation, or to the misrepresention by which the sanction of the Government appeared to have been given to the mislocation, of the Sioux City branch of the Union Pacific, called the Sioux City & Pacific Railroad.

If the bond-aided Pacific system was to be broken up (as petitioners thought, and still think, illegally broken up), still if the Union Pacific main line was to be sold separate and apart from the Sioux City branch, as it was sold, then the petitioners wanted the right to build a connection of their own to the Union Pacific, without subsidy or endowment, to build to the road in the hands of the purchaser, under the provisions of Article 15 of the Act of July 1, 1862,

above quoted, and they wanted to show that the just and equitable terms which they should ask were to be such as had by law pertained to, but never enjoyed by, the mislocated Sioux City & Pacific branch.

That the foregoing charge of mislocation may not be thought to be a figment of a brooding imagination, it may be said, as the petition shows, that the wrong was flagrant and notorious. It has been the subject of much debate in Congress. No report of a commission or committee of Congress has failed to notice it. The Railroad Commissioners' annual and special reports have frequently referred to it. The legislatures of the middle northwestern States protected at the time. The commercial and other associations in the cities and towns of Wisconsin, the two Dakotas, Nebraska and Iowa have petitioned the Congress for relief from it, while reorganization legislation was pending. The expenditure in the properties of the appellants to correct the evil was participated in by the people. Sioux City alone voted and paid over three hundred thousand dollars of aid. The bridge we built is open to all railroads. Congress gave the charter, and the Secretary of War may regulate the tolls.

When the refunding Union Pacific bill was pending before one Congress, and the reorganization bill afterwards before another Congress, the opposition to the passage of either, without some correction of the foregoing evils, -- that is, without an amendment to the bills which should secure a connection to Sioux City and the Middle Northwest with the Union Pacific, — was so great, especially on the part of your petitioners, that both of those proposed measures of Congress were overwhelmingly defeated ; and it may be said there was this much of patriotic result due to the petitioners, that the government realized about twenty millions more from the property than it would have received under either bill ; but even this vast sum is no measure of the loss to the Middle Northwest if the courts have done what the Congress would not do — that is, sell the road without securing the connection.

During both of the contests in Congress, these suits now at bar, except the one brought by the United States, were pending, and except that the others were stalled for the want of an appearance by the United States. Within a week after the defeat of the last proposed reorganization measure, the President of the United States,

Mr. Cleveland, directed his Attorney-General to bring foreclosure proceedings against the Union Pacific to enforce the government lien, and also to appear in the pending litigation in the other suits.

As soon, practically, as the government thus intervened and undertook to proceed affirmatively, the petitioners followed the contest into the new field, and filed their petitions herein.

Brief.

The foregoing recital sufficiently answers some of the erroneous statements in the brief of the appellees. Thus, the appellees say that the petitioners sought, first, to prevent a sale of the Union Pacific in foreclosure, or, in the alternative, to secure a connection with it. In truth, the petitions were brought to secure the connection, or, in the alternative, to prevent the sale. The petitioners do not, more than other citizens, care who owns the road, if they can have free and favorable track and business connection with it, without prejudice or adverse combination or discrimination, — all as contemplated and secured by the law which created and endowed the Pacific railroad companies.

Again, the appellees suggest that the petitioners were dilatory in presenting their intervention. Not so; the petitioners were in no danger until the government purported to bring its new suit and become a party to the pending ones. An intervention before that would have been impertinent. Prior to that time, the petitioners were meeting the contest where it was waged, — in Congress, — and where we think it belonged exclusively, and where it was pending as unfinished business when the Executive Department invoked the Judicial Department of the government, all without authority of Congress.

Argument.

The appellees support their motions with two reasons worthy of consideration:

First. They unite in saying that the order denying the intervention was one of discretion, and so not final and so not appealable.

Second. The attorneys for the government urge that the United States cannot be sued without their consent.

PART FIRST.

Of the First Reason.

(1) *The appellants submit that if by construction the order of the Circuit Court may be held to be one of discretion, and if by general rule discretionary orders are not appealable, still the objection to the appeals is not adequate in these cases.*

The aid given by the United States to the Pacific railroads was probably the largest endowment ever bestowed by any government on any enterprise in our own or any time, and the result was the creation of the greatest developing agent that any people ever enjoyed. That was the return and consideration hoped for, and it was secured forever by the terms of the section of the act on which we rely. It purported to secure certain rights which pertained to the government *as such*, and certain other far more valuable rights which pertained to the people.

Union Pacific R. R. Co. v. *Hall*, 91 U. S. 343.

The interests involved were too vast and of too high a character to be met and defeated or delayed by technical objections.

If we may illustrate: A justice of this court once said of a member of his local home bar that he carried his Americanism too much into his profession, and evidently thought that all questions of law were born free and equal.

Indeed, in this connection it is more than questionable whether the special Acts of Congress governing litigation that involves the bond-aided Pacific railroads, Acts familiar to and heretofore recognized by this Court, do not show or even declare that technical rules which would govern other cases shall be disregarded in these.

Thurman Act (May 7, 1878), Sect. 10.

(2) *The order, if construed as discretionary in law, was nevertheless final in fact in so far as it imposed a present injury, an irremediable obstruction, hindrance and delay.*

An order may be final or not according to the circumstances.

Thus, the rights secured to the petitioners were protected in the executive and not in the judicial department of the government until or unless the judiciary had interferred. This is not a case in which

doubtful intervention in a suit should not be allowed to delay the suit, but it is one in which a doubtful suit ought not to delay the government or the people in the enjoyment of their rights, liberties or franchises.

When the petitioners wanted to build their connecting line, the Union Pacific road was, rightfully or wrongfully, in fact in the hands of receivers in these cases. It was physically in the custody, and financially under the management, of the courts that operated it. An exercise of the petitioners' right to connect and to joint operation would interfere with both possession and operation. What were the petitioners to do?

Their rights were not suspended, but nothing could be accomplished by an original suit to enforce their rights in the same or any other court. They could meet their difficulty only in the suits and court wherein the road was held and operated.

It may be said that they should have applied to the president; but if the road was rightfully in the hands of a receiver, interference would have been contempt, as much so by the president as if by the petitioners.

Suppose the petitioners had written to the president to perform his office in the matter, would not his answer in view of the litiga tion have been that he had referred the matter to the law department? We may state hypothetically that it would be. We may also state, as matter of fact, — though it can do us no good for it is not in the record, — that that is what he did answer, for we tried it.

This Court has ever been mindful of the rights and liberties of the people, not only that they be not ultimately lost, but that they be not thwarted, hindered or delayed. This order that excluded the petitioners from the only litigation in which they could have relief, either then or so long as the receivership under the pending suits should continue, was a present injury, final in every moment of its continuance; as much so as an order which excludes from a receivership suit without relief a party entitled to the rent, income or use of the sequestered property. To do that is not within the unreviewable discretion of a subordinate or any other court.

(3) *The petitioners could intervene as of right, and to exclude them was a present legal injury, irremediable elsewhere.*

The intervention of equity may be had because of a suitor's

reasonable fear of an injury that threatens. The injury need not have happened. These suits were a menace. The petitioners feared (it is so stated in their petitions) that the pending foreclosures would deprive the petitioners of a protection of their rights by the constituted tribunal, the President of the United States.

The fear was reasonable. By the law as it had been enacted, the President was to determine the place at which, and the just and equitable terms upon which, the petitioners or anybody else should have a connection with the Pacific Road. This was a unique office to impose upon the President. Was it constitutional?

While the United States had an interest, a paramount interest, in the roads, the petitioners were not alarmed, for the authority of the President to determine the questions submitted to him would undoubtedly be construed as a power coupled with an interest in behalf of the United States and so held to be a valid power; but if the government were to unite in the sale of the road substantially free from all powers to be exercised in behalf of the government, then the powers imposed upon the President would cease to be coupled with an interest in the United States as such, and his determination of *just* and *equitable* terms, places, and the like would be merely a judicial function which the executive department cannot exercise. The petitioners thought, and still think, that our organic law would make this distinction.

Therefore, when the government appeared to move for a sale in co-operation with the Reorganization Committee of the Union Pacific Railroad, the petitioners sought to intervene, and assigned, among others, the foregoing reason therefor.

Whether the petitioners may be right on the merit of the above question or not is not the question here now, but the question is whether their fear that they might be right was reasonable and one from which they should have been relieved in the threatening suits.

Equity not only permits but requires a party to proceed in the time, place and manner which will enable the Court to afford the relief sought. The rules that govern intervention are no exception to this. If it is a pending suit that threatens the injury, that suit must be controlled; and, if the party aggrieved cannot control the suit and restrain the threatened injury otherwise, he is of necessity

a party to that suit in his own right and to protect his own interest.

The government now purports to have sold out its interests at auction, and the question still is whether any of the rights and the liberties of the people were knocked down on the same block, at the same time, and as a part of the consideration for the one price.

If the petitioners' only relief was to invoke the intervention of the President, does any reasonable man doubt that an appeal now to him would be futile? It was so before the sale. Much more would it be so now since the government once opposed the right sought by the intervention and received an increased price for the property because of the denial of the petitioners' right. Could the President who did this, or any of his successors, honorably interfere in behalf of the petitioners afterwards? It is safe to say they would not if they could.

(4) *The order of the judge of the Circuit Court denied the petitions, not as a matter of discretion.*

The appellees argue for a legal fiction, that the circuit judge's order was one of discretion, and that it was not appealable. He himself says that it was not of discretion, and he granted an appeal.

If the fact and truth of the court may be taken as superior to the argumentative fictions of opposing counsel, the appellants are somewhat embarrassed to find need of any argument on their own part. Legal fictions may be introduced from necessity and possibly for convenience, but never against a substantial right.

Indeed, if the denial of the petitions was not final, they were not denied at all. There is in the order, no simple unqualified denial of the petitions, only a recitation that they are not denied, as a matter of discretion, followed by an allowance of an appeal.

The appellees contend that the order must be construed by itself, and that the reasons given in the opinion are irrelevant. The opinion deals wholly with matters of law, and the opinion impliedly denies the petitions, though it does not say so; while the order, taken apart and by itself, from its punctuation and sense alike, is not a denial, but a qualification and limitation, which makes the implied denial final and grants an appeal.

It says that the "prayers of the petitioners for leave to intervene herein be and the same are hereby denied, not as a matter of discretion," etc., and grants an appeal.

(5) *If the law, as applied to the order, renders the latter discretionary notwithstanding its terms, a patent ambiguity is presented in that an appeal purports to be granted on a discretionary order. Some evidence outside of the order should be admissible to explain it.*

The appellees most earnestly oppose any consideration of the opinion in this case, and, presumably, of the facts and arguments in the original hearing as well.

These cases present jurisdictional questions under the laws of the United States, and the appeal might as well have been directly from the Circuit Court to this court. The question might as well have been brought up directly on *certiorari*. In either event the opinion of the Circuit Court was a part of the record, and the briefs or argument and the evidence, for the appellees introduced evidence by affidavit, would also have been or might have been made a part of the record, and very likely may be now so considered.

These, if considered, take all doubt out of the order and show that it was intended to be final. Everybody wanted it to be so.

Substantially all of the arguments and the evidence were on the merits and on the law.

The purchasers wanted a decision which would enable them to buy and pay for the road free not only from all liens and rights of the government not specially reserved, but also free from all interference on the part of any of the people.

Concerning laws creating and endowing the Pacific Railroad, the main argument of Judge Dillon, and brief and argument of Mr. Pierce, was that the Interstate Commerce law and the laws of Nebraska had superseded Section 15 of the Acts of July 1, 1862, and that the petitioners had no rights save such as all the people enjoyed, under the Nebraska law and the Interstate Commerce law, as construed in analogous cases, which would give to the petitioners a right merely to a mechanical or switch connection. Judge Dillon, not without eloquence, said: —

> "This was one great transcontinental line projected through hostile Indian tribes over wildernesses and mountains. If it was ever to be built it was not dreamed of that it would be paralleled ever or in a remote time. The whole scheme shows you that it was thought if Congress thus crossed the deserts and the mountains with this line, that those through the well-settled

portions of the country would converge to it, and so it provides for a connection of all these branches and a continuous operation, and it provides, so far as the companies which composed the Pacific family are concerned, those which are subsidized, the Kansas branch and the Central branch and the Sioux City branch, that there shall be no discrimination between them, but that provision is limited to the members of the Pacific family. This has become unimportant now, because this provision against discrimination in this section of the Pacific Railroad, against discrimination among the members of the family, is no more than the general provisions of the Interstate Commerce Act — ceased to be of any particular value."

And the counsel for the government of the United States wanted a decision adverse and final to enable the United States to realize a price for the Treasury of the United States enhanced by a decision denying the petitioners' rights.

Besides, we had had an anti-paternal Democratic administration, one that had not bowed the knee to populism, and its attorneys well represented its time-honored sentiments.

We ask leave of the government to quote a short passage from the hearing: —

"Mr. Coombs. The Judge (Hoadley) does not think it a good thing for the United States to have anything to do with the railroad anyway.

Mr. Hoadley. Right you are.

Mr. Coombs. I say, is so anxious for the United States to get rid of it that he does not care what becomes of it.

Mr. Hoadley. Provided its value is paid in to the United States under existing law; yes, sir."

Right here we beg leave to refer to the opinion of the Circuit Court judge: —

"There is another ground upon which intervention is sought. It is that these petitioners are members of the public, and that they have a right to intervene for the purpose of protecting the interests of the citizens of the Republic. But the answer to that is, that the United States, by the officer upon whom the duty is imposed of protecting in this litigation the interest of all the citizens, is prosecuting one and defending the other of the suits for foreclosure. As a member of the public, neither of the petitioners has an interest different in kind from that of every other member of the public resident in the same locality, and upon well-settled principles they are not entitled to intervene upon this ground."

This is not the language of discretion, evasion or postponement, but it is certainly final of a right of a citizen under the law as the Court believed the law to be. But as a proposition of law the question cannot be distinguished from the question in Union Pacific R. R. Co. *v.* Hall, *ubi supra*, and it was erroneous if that decision was right.

By that decision, the law officers of the government do not represent the citizens in the enforcement of the rights that do not pertain to the United States as such, but pertain to the citizens. That in these cases the law officers of the government did not protect but rather endeavored to sell out the rights of the citizens for a price to be paid to the United States "as such" was palpable and not concealed.

We may add in this connection that there is no ground of intervention in equity better recognized than that which a beneficiary under a trust has when his trustee will not protect him and has an adverse interest.

On the whole, and on the contention that the order was discretionary, if the Court is not convinced that the order was final, there must at least be doubt. To hold it to be discretionary does in some measure asperse the intelligence of the eminent jurist that made it, for thus construed he purported to grant an appeal on a discretionary order. So does it asperse his patriotism, since it withheld a right from the people; and palpably it denies his official truth.

If this case on its merits appeals to this Court, the technical question raised, or defective form of its presentation, are not adequate. It is evident that the denial was a present injury, a present denial of a right. Under such circumstances an appeal may be made to the rule under which the appellees make their motion. It is true that the appellees may make their motion as of right, but it is also true that the time in which this Court will decide it is in the *discretion* of this Court. This Court may sometimes have been thought to construe the law very favorably to the Pacific railroad companies as against the government, but on the other hand it has always been scrupulous, even generous, of the rights secured to the citizens in this great enterprise.

We think the Court should hear the merits of the case, and we think the rule contemplates that in such cases the Court will hear the merits before it decides the motion. The rule reads: —

"All motions to dismiss writs of error and appeals, except motions to docket and dismiss under Rule 9, must be submitted *in the first instance* on printed briefs or argument. If the Court desires further argument on that subject, *it will be ordered in connection with the hearing on the merits.*"

The time to decide these motions is after the appeals are heard. To decide then cannot possibly injure anybody, but to decide before may do great injury.

PART SECOND.

Of the Separate Ground for Dismissal urged by the Government:—that the United States cannot be Sued without Consent.

This is more than conceded and is easily disposed of. The United States cannot be sued without their consent, and no branch of the government has any authority to give the consent but Congress, and it is the affirmative duty of the Court, of its own motion, to raise the objection and to stay all suits not brought by the government, or in which the government is not made a party, until the government does authoritatively appear.

To this law, however, there is some modification. When the United States do submit themselves to the jurisdiction of the court, they are subject to all the vicissitudes that beset any other suitor, which is enough for this case.

But we cannot allow the United States to escape their proposition with this answer.

These petitions were brought to secure a right to connect with the Union Pacific at a proper place and on just and equitable terms, or, in the alternative, *to prevent a sale in foreclosure in the pending suits.*

The most of the petition was devoted to a demonstration that the railroads composing "the connected and continuous" road from the Missouri River to the Pacific Ocean could not be broken up and sold separately or at all.

The petitioners think that their petitions were denied by the circuit judge because the petitioners, if admitted, intended to present that view if they could not get a satisfactory connection.

As above shown, the Circuit Judge was not averse to granting a connection to the petitioners, but was, of course, averse to any show-

ing that the suits which were and all the time had been under his control could not be pushed to the contemplated foreclosure sale.

It was said in court by the counsel for the government that the judge upon the bench had required the government to appear in the Ames suit and in the Dexter suit at the time he entertained the government's original bill to foreclose on the government's lien. The Court did not gainsay it. It was said by the government's attorney, in answer to the petitioner's contention that neither the President nor the Attorney-General had any right, without authority of Congress, to appear for the United States in either of the pending suits.

The petitioners, believing that they encountered much prejudice to their assertion that the Pacific railroads could not be sold at auction without the consent of Congress, did, in the hearing before the Court of Appeals, confine themselves mainly to the argument for their right to a connection. They will do so again if they shall be herein heard on the merits.

But the motions and briefs to dismiss utterly ignore the petitioners' contentions that the roads could not be sold in foreclosure under the pending suits in which the intervention was filed.

Perhaps they can be, but, if so, law and logic fail us. Whether they can or not, however, was a question which could be effectively decided only in those cases themselves, and to deny a petition to intervene, for the purpose of showing that they could not be so sold in those cases, was final of the right to make the showing and was appealable.

We do not intend to much further elaborate the interest which the petitioners had as a foundation for their right to intervene to prevent a sale, nor at this time to present much argument that the action of the administration was unauthorized and the sale unlawful.

But the action of the administration in authorizing participation in the litigation within a week after the defeat of the so-called Powers bill was a surprise to all Congress, and we think to all the country. The matter was still pending as unfinished business in Congress at the time.

There was and is not anything now to prevent the disposition of the entire Pacific railroads situation by Congress. We do not hesitate to say that, in our opinion, however honest and wise the admin-

istration may have been in its action, it nevertheless did usurp the functions of a Congress which was certainly in the legal exercise of its own powers over the roads.

Of the petitioners' rights it should be sufficient to cite, for the purposes of this brief, *Union Pacific R. R. Co.* v. *Hall*, ubi supra.

The citizen, without the intervention of the United States as such, does have standing to enforce the rights secured to the citizen in the Pacific roads, and to compel the entire Pacific railroad system to operate throughout its entire chartered length as a connected continuous line.

The continuity and unity of the roads composing the transcontinental line from the Missouri to the Pacific was the most conspicuous feature of the acts creating and endowing the companies. The very title of the original act was, "An act to aid in the construction of a railroad and telegraph line *from the Missouri River to the Pacific Ocean*, and to secure to the government the use of the same for postal, military and other purposes."

The acts constantly speak of it as one railroad.

By Section 12 of the same act, "the tracks upon the entire line of said railroad and branches shall be of uniform width, so that, when completed, cars can be run from the Missouri River to the Pacific coast."

Section 17 of the same act said: —

> "Provided that if said roads are not completed so as to form a continuous line of railroad ready for use from the Missouri River to the navigable waters of the Sacramento River in California," etc., all the roads were to be forfeited to the United States."

Section 15 of the Acts of 1864 said: —

> "The whole line of said railroad and branches and telegraph shall be operated and used for all purposes of communication, travel, and transportation, so far as the government *and the public* are concerned, as one connected, continuous line."

By the Act of March 3, 1869, the right to extend the Kansas Pacific line was granted, but it was enacted —

> "All the provisions of law for the operation of said Pacific Railroad as a continuous line shall apply to said extensions."

Section 15 of the Act of July 2, 1864, hereinbefore quoted, which secured co-operation between the roads and branches without dis-

crimination, and re-enacted that they were to be operated as a continuous line, was, by Act of June 20, 1874, amended so as to make it *a criminal offence for those having the roads in charge to refuse so to operate them*, and imposed effective damages on the companies in behalf of anybody aggrieved by a refusal, and by the same act the Denver and Cheyenne connection was again made a part of the *continuous line.*

By Section 11 of the Thurman Act (May 7, 1878) the failure of any of the companies to perform the requirements of any of the acts aforesaid, for a period of six months, should operate as a forfeiture of "all rights, privileges, grants and franchises derived or obtained from the United States."

By the Acts of May 3, 1873, any Circuit Court of the United States can issue mandamus to the Union Pacific Railway Company to compel such continuous operation. Any citizen can invoke it.

Union Pacific R. R. Co. v. *Hall*, ubi supra.

In the proposed sale in the pending cases, the Union Pacific Railroad alone was to be sold, free from its connections with other members of the Pacific Railroad family, especially free from the Central Pacific and the Sioux City & Pacific (the Sioux City branch), which were not to be sold, and so the communities of the Middle Northwest, as well as the interests owned by your petitioners and others, were to be cut off from connection with the system.

More than this, by Section 17 of the Act of July 1, 1862, not modified or changed by subsequent acts, the United States can take the whole of the roads of the Pacific family and use the income of the whole to repay the expense of keeping all or any in repair.

And by the eighteenth section of the same act, still unrepealed and unaffected, it is provided: —

> "And be it further enacted that, whenever it appears that the net earnings of the entire road and telegraph, including the amount allowed for services rendered for the United States, after deducting all expenditures, including repairs and the furnishing, running and managing of said road, shall exceed ten per centum upon its cost, exclusive of the five per centum to be paid to the United States, Congress may reduce the rate of fares thereon, if unreasonable in amount, and may fix and establish the same by law."

That included the whole "continuous and connected" line.

For this partial showing of our reasons, we contended for admission to show that the Union Pacific could not be sold in fragments separately; in other words, that the main line could not be sold out of and free from all connections with Sioux City and the Middle Northwest and the Pacific, even if it could be sold at all without an Act of Congress.

Nay, more; we contended that none of the roads of the bond-aided Pacific system could be sold at all. The rights of the public were paid for and had vested. Such sale was not the government's remedy for default. The acts everywhere provide that the remedy to the government for default on the part of the companies to the government is forfeiture.

This is set forth in Sections 5 and 6 of the Acts of 1862, and especially by Section 11 of the Thurman Act (May 7, 1878), and finally it has been so declared by this Court in a decision which has been subjected to wider criticism from those who did not understand it, perhaps, than any decision ever rendered by this Court. It was the decision in the case wherein this Court decided that the interest on the subsidy bonds was not payable till the principal matured. *United States* v. *Union Pacific R. R. Co.*, 91 U. S. 72. The argument in that case, made by the defendant railroad company itself, was as follows: —

> "Throughout the charter, the provisions to protect the government, we submit, are in clear terms, either in indisputable common law strict conditions or a mortgage which is shaped as a strict condition, allowing no equity of redemption but providing a mere summary forfeiture."

This Court practically adopted that construction in that case and, dwelling upon the fact that a forfeiture would follow any default under the sixth section of the Act of July 1, 1862, held that there would be default in the payment of the interest on the subsidy bonds only when the principal matured, at which time —

> "There was left for the government the entire property of the corporation, of which immediate possession could be taken on a declaration of forfeiture . . . Congress . . . rested satisfied with the entire property of the company as security for the ultimate payment of the principal and interest of the bonds."

In this connection, and in contemplation of the consequences of any sale, we earnestly request this Court to review its opinion in *United States* v. *Union Pacific Railway Co.*, 160 U. S. 1.

Now, for a remaining word on the argument of the counsel in behalf of the government that the United States cannot be sued without their consent.

This means that if we cannot intervene in the suit wherein the United States has submitted to jurisdiction, we can have no control over the United States in any other suit.

But on this matter, and on the action of the Attorney-General or the President, we desire to quote from the report of the minority of the Pacific Railroads Committee in Congress, made on a bill which Congress was considering after the legal proceedings on the part of the government had been instituted. We think it good fact and law. It is alleged in the petitions: —

> "It should be first noticed that the Attorney-General does not purport to have been guided so much by his duties as the law officer of the government as he does by his abilities as a trader. His first public announcement of what he had done rested his justification on the guaranteed bid he had secured and the deposit he had obtained. The legal procedure he has instituted as Attorney-General is all ancillary and subordinate to this. But the Attorney-General's authority cannot depend upon the price — if he could sell out for $46,000,000, then equally, he can do so for forty-six cents; and his office does not empower him to sell at all.
>
> But the Attorney-General's procedure in pursuance of the agreement was more in excess of his authority than was the agreement itself — for he did not merely bring foreclosure proceedings in behalf of the government's lien, but filed his appearance for the United States in the pending foreclosure suit in behalf of the first mortgage bonds, whose holders assert a lien in priority to the lien of the government, and, as this minority is informed and believes, his bills were actually filed in this prior foreclosure suit. He does not so much foreclose for the government as he subjects the government's interest to foreclosure. For his want of authority to do this, attention is called to a few decisions of the Supreme Court of the United States: —
>
> 'Without an act of Congress no direct proceedings will lie at the suit of an individual against the United States or its property, and no officer of the government can waive its privilege in this respect nor lawfully consent that such a suit may be prosecuted so as to bind the government. (Headnote [in L. Ed.] by Mr.

Justice Bradley, who gave the opinion in *Carr* v. *United States*, 98 U. S. 433.)

Comptrollers of the Treasury cannot submit the rights of the government to litigation in any court without some express provision of law. (*Case* v. *Terrell*, 11 Wall. 199.)

Claims against and liens upon property of the United States are incapable of enforcement except when such property becomes subject to the control of the court. (*The* [*ship*] "*Siren*" v. *United States*, 7 Wall. 152.)

Individuals, as well as courts, must take notice of the extent of authority conferred by law upon a person acting in an official capacity. (*Hawkins* v. *United States*, 96 U. S. 689; *Whitsides* v. *United States*, 93 U. S. 247.)

When the property of the government is concerned, it is proper for the attorney for the United States to intervene by way of suggestion, and in such case, if the suit be not stayed altogether, the court will adjust its judgment according to the rights declared on the part of the government thus intervening. (*Stanley* v. *Schwalby*, 147 U. S. 508, 513, and citations; see also 7 Cranch, 116–147, the leading case.)

When a State or the government is a necessary party defendant, the Court will decline jurisdiction, and the proceedings will be dismissed. (*Cunningham* v. *Railroad Company*, 109 U. S. 446–451.)'"

In some measure against this, the attorneys for the government say in their brief, in support of the motions, that the Union Pacific has been "long since transferred to the purchasers subject to ample protection in the decrees of all rights of the government in all other capacities." This assertion is constructed not without art. If its intended implications were true, it would not be sufficient.

The attorneys say they submit copies of the decrees. We have none at hand, but our memory is that there was a reservation of only such rights as pertained to the United States, referring principally to a mail service for fair rates, which was really an additional benefit to the purchasers.

But nothing of the rights of the people was reserved in any decree, and, as the petitioners remember, the reservations of rights to the United States was made only in the decree in the suit of the United States. So that all the United States saved in the decree in their own suit on the foreclosure of the second mortgage, they lost in the foreclosure sale under the *first mortgage* at the same time, and in

which suit also the United States purported to appear as a party defendant and was bound, and in which the decree contained no such reservations.

The decrees are before the court so that the court may see if the petitioners remember rightly. It is, however, enough, if the rights secured to the public under the acts quoted were not reserved, and it is not contended that they were.

The petitioners were entitled to standing to see that they were, and as they were not, the exclusion of the petitioners proved to be in fact, as it was in law, final. That is, if it be conceded that there could be any such sale.

The appellees also urge that the United States have been paid in full, and that the roads are, in justice as well as law, quit of the government and the people. The effrontery of this eclipses its ingratitude. The interest on the deferred interest would amount to about as much as the original principal and interest; was that repaid?

The land grant, too, was worth as much as the original bonds.

"The United States have been paid"? When was there another such creditor?

If the purchasers got all they claim, — all that the petitioners were excluded from asserting, — there was not so great a sale of liberties when slavery prevailed in all the States.

Americans have been shot down like dogs by federal troops, in pursuance of the orders of the federal judiciary, because they so much as obstructed or conspired to obstruct the performance of a mail contract of the United States, till some of the people murmur that "government by injunction" is murder legalized before the fact, and others do say that it is always in behalf of the corporations and against the people, but most of them are more patient and loyal and say it is the law.

Here was what this Court called "a great national highway," built by government money, the means of the government and the people for intermountain and transcontinental mail and telegraph communication, the greatest military arm of any nation at any time, and for the hope it held out in the rights secured to the people it was, and is, the inducement and base of operation for every pioneer and enterprise in the new empire it opened. The unity, continuity and use-

fulness of the whole was founded in reiterated national statutes, and protected by a special penal code.

What, then, should be the deserts of an executive department or officers and a syndicate which conspire to and claim to have achieved the utter dismemberment of the completed work, an auction sale and purchase of its fragments, and the dissipation of all its promises, uses, and duties?

Shall they be approved on a lawyer's motion that these matters rested in the discretion of a circuit judge.

It was thought at the time the government appeared in the suits, that the purchasers of the Union Pacific Railroad would have to come to Congress for a charter to enable them to operate their properties, and it was thought that Congress could then see to it that the rights of the government and the people should be protected. Instead of that, however, this vast system seems to be run under a charter obtained from the State of Utah, and the corporation shuns no place more than the forums of the people who created and endowed it.

Coming from Utah, it has, of course, as much standing in federal tribunals as if from another State; but if the consequences of the sale are that the vast powers and high destinies and duties imposed upon these properties can be thwarted, directed or controlled by such charters as any one State may see fit to grant, alter, amend, or repeal, isn't that a sufficient answer to the legality or possibility of such a sale? Did all the former statutes, all the declared justice and wisdom of this tribunal in behalf of the people on the matter, go to the highest bidder? And is the citizen without standing and the Court without jurisdiction to stay or to object?

The last ditch in which this court has always been entrenched to save remedial acts for the government and the people, the great reliance of all Congress and of the noble Thurman, worthy of mention in particular, the abiding comfort of the people herein, has ever been in one section of the original act, so familiar that we almost know it by heart, Section 18, Act of July 1, 1862: ". . . And the better to accomplish the objects of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line and keeping the same in working order, and to

secure to the government at all times (but particularly in time of war) the use and benefits of the same for postal, military and other purposes, *Congress* may at any time, having due regard for the rights of said companies named herein, add to, alter, amend or repeal this act."

These motions at bar, made by the executive department and by the purchasers, are to substitute "Utah" for "Congress" in the above act for fifty million dollars."

The answer we expect is, "Not if it were billions."

Respectfully submitted,

JOHN C. COOMBS,
HENRY J. TAYLOR,
Counsellors and Solicitors for Apellants.

Nos. 233, 234 and 235.

Supreme Court of the United States.

OCTOBER TERM, 1899.

Brf. of Pierce, Dillon, Kelly &

Lamberton for Appellees (mo.)

Supreme Court U. S.
FILED
JAN 27 1900
JAMES H. McKENNEY,
Clerk.

No. 233.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, *Appellants,*

vs.

THE UNITED STATES OF AMERICA ET AL., *Appellees.*

Filed Jan. 27, 1900.

Also No. 234.

SAME APPELLANTS

vs.

F. GORDON DEXTER and OLIVER AMES, Second, Trustees, ET AL., *Appellees.*

Also No. 235.

SAME APPELLANTS

vs.

OLIVER AMES, Second, and SAMUEL CARR, Executors, etc., ET AL., *Appellees.*

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR APPELLEES ON MOTIONS TO DISMISS APPEALS.

WINSLOW S. PIERCE,
LAWRENCE GREER,
Counsel for F. Gordon Dexter and Oliver Ames, Second, Trustees, Appellees.

JOHN F. DILLON,
WILLIAM R. KELLY,
G. M. LAMBERTSON,
Counsel for The Union Pacific Railway Company and S. H. H. Clark et al. Receivers, Appellees.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

OCTOBER TERM, 1899.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY, Appellants, AGAINST UNITED STATES OF AMERICA ET AL., Appellees.	No. 233.
SAME APPELLANTS AGAINST F. GORDON DEXTER and OLIVER AMES, SECOND, ET AL., Appellees.	No. 234.
SAME APPELLANTS AGAINST OLIVER AMES, SECOND, and SAMUEL CARR, Executors, *et al.* Appellees.	No. 235.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE EIGHTH CIRCUIT.

BRIEF FOR APPELLEES ON MOTION TO DISMISS THE ABOVE-ENTITLED APPEALS.

Statement.

These are motions to dismiss (and in the alternative to affirm) appeals from orders made by the United States Circuit Court of Appeals for the Eighth Circuit, dismissing appeals to that Court from orders made by the United States Circuit Court for the District of Nebraska which denied applications of the Credits Commutation Company and of the Combination Bridge Company for leave to intervene in three causes pending in the last-mentioned court.

At the outset we encounter the anomaly of appeals taking in the Circuit Court of Appeals, as well as in this Court, titles wholly different from those of the causes in the Circuit Court in which the proceedings for intervention were had. There were no cases in the Circuit Court of the United States for the District of Nebraska bearing the titles of these appeals. The titles of the cases in which the orders appealed from were made and the order in which these cases were brought and their natures are as follows:

The first of the three causes (stating them in the order in which they were brought), entitled OLIVER AMES, SECOND, AND SAMUEL CARR, EXECUTORS, ETC., AGAINST THE UNION PACIFIC RAILWAY COMPANY ET AL., generally known and in this Brief referred to as the "Ames cause," was brought by stockholders and creditors of The Union Pacific Railway Company for the appointment of receivers and the administration of the properties of The Union Pacific Railway Company. The appeal to this Court from the order of the Circuit Court of Appeals dismissing the appeals

from the order of the Circuit Court which denied the petition for leave to intervene in this cause is presented in the record in this court, Docket No. 235.

The second of these causes, entitled F. GORDON DEXTER AND OLIVER AMES, SECOND, TRUSTEES, AGAINST THE UNION PACIFIC RAILWAY COMPANY ET AL., generally known and in this Brief referred to as the "Dexter cause," was brought by the trustees of the First Mortgage of The Union Pacific Railroad Company to foreclose that mortgage. The appeal to this court from the order of the Circuit Court of Appeals dismissing the appeals from the order of the Circuit Court which denied the petition for leave to intervene in this cause, is presented in the record in this Court, Docket No. 234.

The third of these causes, entitled THE UNITED STATES OF AMERICA AGAINST THE UNION PACIFIC RAILWAY COMPANY ET AL., generally known and in this Brief referred to as the "Government cause," was brought by the United States for the forclosure of its Subsidy Lien (coterminous with the first mortgage) upon the property of the Union Pacific Railroad between Council Bluffs, Iowa, and a point five miles west of Ogden, Utah. The appeal to this court from the order of the Circuit Court of Appeals dismissing the appeals from the order of the Circuit Court which denied the petition for leave to intervene in this cause, is presented in the record in this court, Docket No. 233.*

The petition of the Credits Commutation Company (No. 235: p. 46 *et seq.*) for leave to intervene was filed

* References to the records in this court will, for convenience and brevity, be by indication of the numbers of the cases on the docket of this Court.

in the Ames cause more than four years after that cause was instituted, and more than two years after the railroad had passed into the hands of the receivers in the mortgage foreclosure cause. It was filed in the Dexter cause (No. 234 : p. 52 *et seq.*) more than two years after that cause was instituted, and when that cause was ripe for final decree. It was filed in the Government cause (No. 233 : p. 42 *et seq.*) several months after its institution, and when, the issues having been made up, that cause was also substantially ripe for final decree.

The statement of the cases and of the nature of the petitions of the Credits Commutation Company and the Combination Bridge Company may be best and most compactly made in the language of the Circuit Court of Appeals (No. 233 : p. 177. No. 234 : p. 189. No. 235 : p. 178).

"These cases are before the Court on the present occasion on motions to dismiss the several appeals. The appeals were taken from orders made by the Honorable WALTER H. SANBORN, Circuit Judge, which denied the application of the Credits Commutation Company and the Combination Bridge Company, the appellants, for leave to intervene in three suits which were at the time pending in the circuit court of the United States for the district of Nebraska. One of these suits was a bill filed on October 9, 1893, by Oliver Ames, 2d, and Samuel Carr, Executors of the last will and testament of Frederick L. Ames, deceased, and others, which is commonly termed the "Stockholders' Suit" ["Ames cause"] the other was a bill which was filed on January 21, 1895, by F. Gordon Dexter and Oliver Ames, 2d, Trustees, against The Union Pacific Railway Company and others [Dexter cause], for the purpose of foreclosing the first mortgage on the Union Pacific Railway; and the third was a bill filed on January 23, 1897,

by the United States against The Union Pacific Railway Company and others [Government cause], for the purpose of foreclosing its statutory lien upon the property of said railway company. On April 28, 1897, when said cases were about ripe for a final decree, the Credits Commutation Company and the Combination Bridge Company presented an intervening petition to Judge SANBORN, and asked leave to file the same in each of said suits, and thereby become parties thereto. On the presentation of the intervening petition, an order was made requiring all parties in interest in said suits to show cause, on a day specified, why the prayer of the petitioners for leave to intervene should not be granted. [No. 233: p. 141. No. 234: p. 151. No. 235: p. 145.] On the return day of said order, objections to the filing of said intervening petition having been duly made and considered, it was ordered 'that the prayers of the petitioners for leave to intervene herein be, and the same are hereby, denied, not as a matter of discretion, but because said petiitons do not state facts sufficient to show that these petitioners, or either of them, have a legal right to intervene.' From this order which was entered at the same time and in the same form in each of the above cases, the present appeals were taken. [No. 233: p. 152. No. 234: p. 162. No. 235: p. 156.]

"The ground upon which the petitioners below, who are the appellants here, sought leave to intervene in the pending litigation against The Union Pacific Railway Company, was as follows: The Credits Commutation Company alleged that it was entitled, as beneficiary in a deed of assignment, to three-fourths of the capital stock of the Sioux City and Northern Railway Company, which was a railroad extending northwardly from Sioux City, Iowa, for a distance of about 100 miles, to a junction with the Great Northern Railroad, in the state of Minnesota; that it was also entitled to all of the stock of the Sioux City, O'Neill and Western Railroad, which was a road extending westwardly from Sioux City, Iowa, to O'Neill, Neb., a distance of about 130 miles; that these roads were connected at Sioux City, Iowa, by a bridge across the Missouri River, whose capital stock was all owned by the Credits Commutation Company; that the petitioners proposed to extend the Sioux City, O'Neill and Western Railroad to a junction with the Union

Pacific Railroad in the western part of the State of Nebraska; that their ultimate design was to form a line of transportation, by means of the aforesaid railroad and bridge companies, and certain terminal properties in Sioux City which the petitioners then owned, and thereby promote an interchange of traffic between the head of the Great Lakes, at Duluth, and the region of country lying west of the Missouri River, opposite to Sioux City. They further averred in the intervening complaint that, by virtue of various provisions of the act creating The Union Pacific Railway Company and the amendments thereof, particularly by sections 14 and 15 of the act of July 1, 1862 (12 Stat., 489, c. 120), and by section 17 of the act of July 2, 1864 (13 Stat., 356, c. 216), the right was accorded to the petitioners to form a junction with the Union Pacific Railroad, not farther west than the one hundredth meridian of longitude, whenever they should have completed their proposed line of railroad through the States of Iowa or Minnesota to Sioux City, and thence southwestwardly to a point on the main line of the Union Pacific Railroad. In view of the foregoing facts, the petitioners craved leave to intervene and be made parties to the three suits then pending against The Union Pacific Railway Company, to the end that they might, in the first place, resist, and, if possible, prevent a foreclosure sale of the property and franchises of said railroad company under decrees made in the pending suits, or, if defeated in that object, to the end that they might preserve their alleged right to connect their proposed line of railroad with the main line of The Union Pacific Railway Company, by appropriate provisions inserted in the decree of foreclosure, provided a foreclosure sale of the latter company's property and franchise should eventually be ordered."

The Circuit Court of Appeals sustained the motions to dismiss the appeals from the orders of the Circuit Court denying appellants leave to intervene and dismissed said appeals with costs, and the appeals now sought to be dismissed in this court are from those orders of dismissal made by the Circuit Court of Appeals (Orders: No. 233, p. 181; No. 234, p. 194; No. 235, p. 182).

If the orders of dismissal made by the Circuit Court of Appeals are not erroneous those orders must be affirmed here and the present appeals must be dismissed.

The Circuit Court of Appeals had no jurisdiction of the appeals taken to it from the orders of the Circuit Court denying the petitions for leave to intervene, and hence the orders of the Circuit Court of Appeals were correct, and, being correct the present motions in this court to dismiss the appeals taken to it must be sustained.

The GROUNDS of the present motion are as follows:

FIRST. The order of the Circuit Court of the United States, for the District of Nebraska, from which the said appeal to the Circuit Court of Appeals was taken, was not a final decision of the said Circuit Court of the United States within the meaning of Section 6 of the Act of Congress, approved March 3d, 1891, entitled "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States, and for other purposes," and hence said Circuit Court of Appeals had no jurisdiction of the appeals taken to it, and, for like reason the Supreme Court has no jurisdiction of the present appeals.

SECOND. It was within the legal discretion of the Circuit Court of the United States, for the District of Nebraska, to

grant or deny the application of the appellants for leave to intervene in the pending causes, and that court in denying such application exercised its discretionary powers and its action could not be reviewed by the Circuit Court of Appeals and will not be reviewed by this Court.

THIRD. The appellants never became parties to the suits in which intervention was sought and in which the orders refusing such intervention were entered.

FOURTH. The petitions of the Credits Cmmutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the Act of Congress of March 3d, 1891, establishing the Circuit Courts of Appeals and defining their jurisdiction, and hence,

FIFTH. The order of the Circuit Court of the United States, for the District of Nebraska, being non-appealable, and properly so held by the Circuit Court of Appeals, the same will not be reviewed by the Supreme Court on appeal from the order of the said Circuit Court of Appeals.

ARGUMENT.

I.

The orders of the Circuit Court denying the petitions for leave to intervene did not finally dispose of the cases in which such orders were made as to all the parties to the record, and for this reason were not "final decisions."

Section 6 of the Act of March third, 1891, provides as follows:

"That the Circuit Courts of Appeals established by this Act shall exercise appellate jurisdiction to review by appeal or by writ of error final decision in the District Court and the existing Circuit Courts in all cases other than those provided for in the preceding Section of this Act unless otherwise provided by law."

* * * * * *

This precise point has been decided by this Court in the case of *United States vs. Girault*, 11 How., 22. In that case it appeared that final judgment had been entered up against some of the defendants without disposing of the cause as to the others. This Court, on a writ of error, said (p. 32):

"* * *but the* judgment in the case should not have been finally entered until the cause was ready for final disposition as to all. The practice in this court, in case the judgment or decree is not final, is to dismiss the writ of error or appeal for want of jurisdiction, and remand it to the court below to be further proceeded in."

It is obvious that the order made in the foreclosure and other cases denying the petitioners leave to intervene, was not a "*final disposition as to all*" of the

parties. No decree of foreclosure had been entered, nor any other decree disposing of the issues raised by the complaint and answers.

In *Dainese vs. Kendall*, 119 U. S., 53, 54, this Court said:

"The authorities are uniform to the effect that a decree to be final for the purposes of an appeal must leave the case in such a condition that *if there be an affirmance here the court below will have nothing to do but to execute the decree it has already entered (Bostwick vs. Brinkerhoff*, 106 U. S., 3; *Grand vs. Phœnix Ins. Co.*, 106 U. S., 429, 431; *St. Louis & Iron Mountain & Southern Railroad vs. Southern Express Co.*, 108 U. S., 24, 28; *Ex Parte Norton*, 108 U. S., 237, 242; *Mower vs. Fletcher*, 114 U. S., 127*)*."

II.

No appeal lies from an order denying petition for leave to intervene in a pending cause.

It has been repeatedly held by this Court that, beyond the specific exceptions provided for in the Act of Congress of March 3d, 1891, no change was made by that act in the requirements of the previous statutes with respect to the character of decisions from which appeals may be taken, and that the question whether or not a decision is *final* remains the test of appealability as well under the act of 1891 as under the previous statutes.

On the subject, therefore, of the appealability of a judgment or order, the cases decided by the Court prior and subsequent to the act of 1891 are in harmony and equally apply the test of *finality* of the decision.

This subject is fully discussed in the cases of

McLish vs. Roff, 141 U. S., 661.
C., St. P., M. & O. Ry. Co. vs. Roberts, 141 U. S., 690.
American Construction Co. vs. Jacksonville, etc., R. R. Co., 148 U. S., 372.
Kirwan vs. Murray, 170 U. S., 205.

This makes the case of *Ex parte Cutting*, and other cases to which we will refer below, direct and conclusive authorities upon the proposition here made—*i. e.*, that the order of the Circuit Court denying leave to the petitioners to intervene in the pending causes was not an appealable order.

In the leading case of *Ex parte Cutting*, 94 U. S., p. 14, certain stockholders filed a petition in a pending suit brought for the foreclosure of a mortgage upon the property of a railroad company, and asked to be allowed to come in and defend said suit and be made defendants therein. It did not appear from the record whether any action was taken by the court upon this petition after it was filed. Subsequently such proceedings were had in the foreclosure suit that a decree of foreclosure and sale was entered in accordance with the prayer of the bill, none of the petitioners objecting in any manner against the decree. Afterwards a motion was made to confirm the sale, which had been made under the decree, and the same stockholders who had before filed the petition for leave to intervene again filed a petition asking for leave to intervene in order to set aside the decree of sale theretofore entered in the suit. This motion was denied by the court and the petitioner applied for the allowance of an appeal to this Court, which was also denied. The petitioners then asked for a mandamus to the Judges

of the Circuit Court, commanding them to grant an appeal to the Supreme Court. This Court held that the petitioners had never become parties to the suit in the court below and that no appeal would lie from the order of the Circuit Court denying the petition for leave to intervene. Mr. Chief Justice WAITE, reading the opinion of the court, said :

" Upon this state of facts it is impossible to say that the petitioners, or any of them, have established their right to appeal as actual parties to the suit before the decree.

No appeal lies from the order of October 3rd refusing them leave to intervene and become parties, for that was only a motion in the cause and not an independent suit in equity appealable here.

Neither can these petitioners appeal as stockholders. *Only parties, or those who represent them, can appeal.* The stockholders do not represent the Corporation ; but, for some purposes, the Corporation represents them. They are sometimes admitted as parties to a suit, for the purpose of protecting their own interests in the Corporation against unfounded and illegal claims against it, *but this 'remedy is an extreme one, and should be admitted by the court with hesitation and caution'* (Bronson vs. R. R. Co. *(supra). It is always addressed to the sound judicial discretion of the court.* That we cannot control by *mandamus.*"

In the present cases no claim or right of the appellants was passed upon or decided by the Circuit Court other than the right to intervene and become parties to the pending suits. The action of the Circuit Court left them perfectly free to assert their claims or rights (no matter whether substantial or fanciful) through an original bill, and such rights were not concluded or finally decided by the order of that court refusing to allow the assertion of such rights in cases to which the appellants were not parties.

The right of intervention in a pending and undetermined cause, AND THAT RIGHT ALONE *was denied and concluded by order of the Circuit Court.*

In such a case it is perfectly well-settled law, without any existing decisions to the contrary, that the order is not appealable.

All cases which may be suggested as authorities to the contrary of this proposition are easily distinguishable on obvious principle.

In all such cases in which the right of intervention was in any way considered or recognized in reversal of the court below, that subject was in the nature of a sequence or incident, and its decision merely followed the decision on other controlling questions which were involved in the appeal, and which primarily determined the right of appeal. In all such cases a complete record and case below had been made, and the decree or order, made upon pleadings, trial and hearing, had finally and conclusively adjudged the *substantial* rights of an intervenor, *and not merely his right to introduce himself into a case in which he was not made a party.* In every such case where the right of intervention so figured as an incident of an appeal from an order or decree, that order and decree finally decided and concluded the rights of the intervenors, so that they could not again be asserted by means of an original proceeding. And herein lies the controlling distinction, and makes the cases, thus distinguished, serve as emphasis to the rule that an order merely denying leave to intervene and concluding no right, except the alleged right of intervention *is not a* FINAL ORDER *and hence not* an APPEALABLE ORDER.

In the present case the order of the Circuit Court neither in its terms or essence

denied any other right of the appellants than their right to intervene and become parties to a particular pending and undetermined litigation. Whatever other rights they might possess were in no wise decided or concluded by the order of the court, and the appellants were left perfectly free to assert such rights in any court of competent jurisdiction.

In the case of *Hamlin vs. Railway Company*, 78 Fed. Rep., 664, the facts were as follows: Certain holders of preferred stock of a company petitioned the court to be made defendants and for leave to file an answer and cross bill in a suit then pending for the foreclosure of a first mortgage of a company. This application was granted subject to the right of the complainants to move to strike out the answer and cross-bill. The complainants did so move, and upon the motion an order was entered denying the petitioners the right to intervene or to file an answer or other pleading. From this order an appeal was taken, and the court held that an appeal would lie from this order as a final decree to the Circuit Court of Appeals, for the reason that the application of the petitioners to intervene had been granted, and that thereby they became parties, and that the order subsequently made dismissing them from the cause was a final decree; but the court further said that no appeal could have been taken from the original order granting the petition for intervention, that being a matter within the discretion of the court.

LURTON, Ch. J., reading the opinion of the Circuit Court of Appeals, for the Fifth Circuit, says:

"The allowance or denial of the application of a stranger to be admitted as a party defendant in a pending suit in equity rests in the sound discretion of the Chancellor. The denial of such an application is not such a final decree as is the subject of appeal under section 692 of the Revised Statutes. Such an application is a mere motion in the case made by one not a party and is not of itself an independent suit in equity appealable here (Citing cases). It follows, therefore, that if no other order had been made in reference to the application of appellants to become parties than that of May 14th, 1896, no appeal would lie and the motion to dismiss should have been sustained."

See also the case of *Toledo, St. L. & K. C. R. R. Co. vs. Continental Trust Company*, 95 Federal Reporter, 497, 536 (decided July 5, 1890), where the Circuit Court of Appeals for the Fifth Circuit, again following the case of *Ex parte Cutting (supra)* says:

"From a decree refusing leave to intervene and become a party no appeal lies."

The rule that an order denying leave to intervene in a pending and undetermined cause is not a *final* order and therefore not appealable, is reiterated in many of the cases which are cited under the next following proposition, and which hold that such an order is not appealable *for the further and independent reason* that the matter of permitting or denying leave to intervene in such a cause is one of *discretion* in the Court making the order.

III.

The principle is well settled that any decision which rests in the discretion of a court of original jurisdiction cannot be re-examined in an appellate court.

This Court, in the case of *Cook vs. Burnley*, 11 Wall., 672, 676, said that

"it is well settled that decisions which rest in the discretion of a court of original jurisdiction cannot be re-examined in an appellate court upon a writ of error" (citing numerous cases).

See, also, on this point, *Ex parte Cutting (supra)*.

In the case of *Connor vs. Peugh*, 18 Howard, 394, the case was brought to this Court by writ of error to the Circuit Court for the District of Columbia, and was heard on the motion to dismiss the writ. In this case, after a judgment in ejectment had been entered against the casual ejector, the tenant in possession came into court and moved to have the judgment set aside, and asked for leave to intervene. Mr. Justice GRIER, delivering the opinion of the court, said:

"The motion afterwards made to have the judgment set aside and for leave to intervene was an application to the sound discretion of the court. To the action of the court on such a motion no appeal lies, nor is it the subject of a bill of exceptions or writ of error."

In the case of *Hamlin vs. Railway Company*, 78 Fed. Rep., 664, which was cited above on the proposition that an order denying a petition for leave to intervene is not final, and, therefore, not appealable, the court proceeds to further discuss the order of May 14th, 1896 (referred to in the portion of the opinion

above quoted), granting to the petitioners the right to intervene and plead, and from which the court says appeal would not lie. Continuing, the Court says :

" If the court had continued the motion [for leave to intervene] until the pleadings had been examined and then denied leave to intervene because the answer made out no substantial defense the denial would not have been ground for an appeal."

[The questions arising in that case on the motion of the complainants to strike out the answer and cross-bill filed by the intervenors involved the discussion of the merits of the answer and cross-bill, and the opinion of the court below passed upon the merits of the claims asserted in the answer and cross-bill.] " The decree then entered, when construed in connection with the decree admitting appellants as parties, should be interpreted as one denying the appellants any relief upon the ground that neither their intervening petition nor their answer and cross-bill showed any such interest.

" *It is wholly a matter of discretion whether the court will allow such quasi parties to become formal parties to the cause by intervention. * * * The order refusing their petition to be made formal parties to the cause and denying the other relief asked for is not a final decision within the meaning of the Statute authorizing appeals to this court.*"

In the case of *Lewis vs. Railroad Company*, 62 Fed. Rep., 218, the facts were as follows :

A suit was pending in the court below against the Railroad Company brought by a stockholder and asking for the appointment of a receiver of the property of the company. Subsequently the trustee of the Second and General Mortgages of the Railway Company filed a bill for the foreclosure of these mortgages. Complainant in the stockholder's suit afterwards filed his petition in the case brought by the trustee praying that the two suits be consolidated. This petition was dismissed by the Circuit Court, and on the same day the petitioner filed his petition praying that he might be

made a party to the foreclosure suit. The prayer of this petition was also denied and the application dismissed. Subsequently the petitioner filed his petition for an allowance of an appeal from the rulings of the court refusing his petition for consolidation and his petition to be made a party. The petition was dismissed, its prayer having been denied and the petitioner then applied to the Circuit Court of Appeals praying that a mandamus might be issued to the Judges of the Court below commanding them to grant the petitioners an appeal from the said orders. This petition for mandamus was denied and the court said :

" With regard to the motion for consolidating * * * this was addressed to the discretion of the court and was wholly within its discretion (R. S. U. S., Section 921). We cannot by mandamus interfere with the Circuit Court in this exercise of its discretion.

" So, also, as to the petition to make Street a party in the Lewis case. He was not a necessary party, and, even were he a proper party, still this was within the discretion of the court. In the present instance this discretion was wisely exercised. * * * *Besides, this refusal of the Circuit Court to admit Street as a party is not an appealable order. It is in no sense a final judgment. It concludes no right.* In the language of WAITE, C. J., in *ex parte* Cutting, 94 U. S., 22, 'No appeal lies from the order refusing them leave to intervene and become parties. That was a motion in the case and not an independent suit in equity appealable here.' Were the courts of last resort to entertain appeals to make a person a party causes would be constantly going up piecemeal, great confusion would be created and insufferable delays caused."

In the case of *Smith vs. Glasgow Investment Co.*, 47 Fed. Rep., 332, Circuit Court of Appeals, Fourth Circuit, intervention by petition was allowed in a foreclosure case. The petitioner set up a simple contract claim against the company, and sought payment out of the mortgaged property *pari passu* with the bonds secured

by the mortgage. Demurrer was interposed to petition, and, upon hearing, the demurrer was sustained and the petition was dismissed. Exceptions were taken, and the cause came to the Circuit Court of Appeals on assignments of error. The court said :

"Objection was made to the intervention of the petitioner by way of petition instead of proving his demand before the Master. His intervention in this way makes him a party to the record. *This is a matter wholly within the discretion of the Judge below.*" (Citing *ex parte Cutting, supra.*)

In the present case the application was wholly denied by the order of the Circuit Court, and nothing appeared in the order to show that the court did anything else except deny the application.

In the case of *United States vs. Thomas*, 151 U. S., 577, the question presented by the motion was not determinable in the discretion of the court, and for that reason it was held that such question might be certified to the Supreme Court. In that case this Court said :

"It is the general doctrine that there can be no certificate of a division of opinion between the Judges of the Circuit Court on a motion for a new trial, as such motion usually rests in the discretion of the court, and therefore properly presents no question for our determination (citing case), but such is not always the case. Sometimes a motion of the kind, or of a similar kind, may present for consideration a question going directly to the merits, and a decision of which may determine the point in controversy. In such instances the court will consider the question submitted on a certificate of division of opinion between the Judges of the Court below."

In that case the motion went to the merits of the case, and presented for consideration a question upon the merits, and the decision involved a determination

of the merits. In the present cases the application presented no question upon the merits of the appellants' claims, and the order decided no such question. In its terms it declares that the only question decided was the right of the appellants to intervene in the pending causes.

It may be suggested here, as it was below, that the orders of the Circuit Court denying the motions for leave to intervene had some different significance in respect of appeal, because of the recital made in said orders that the petitions to intervene were denied "not as a matter of discretion, but because said petitions do not state facts sufficient to show that the petitioners or either of them have a legal right to intervene."

A little consideration will show that this recital in the orders can make no difference as to the legal effect of the orders. This is a statement of the opinion of the court, and the fact that it is inserted in the orders does not change its nature as such opinion. *The only material thing is the order.* The fact remains, notwithstanding any recital by the judge as to his opinion or reason for making the order, that the order was in the discretion—the "*judicial* discretion" as stated by this Court—of the Circuit Court. The reasons why the judge made the orders are immaterial so far as affects the question whether appeals will lie from them. Precisely such an argument as the one which the would-be appellants may seek here to make was made to this Court, and disposed by it, in the case of *Corning vs. Troy Iron and Nail Factory*, 15 How., 451. The court said (p. 464):

"It is true that the petition for the appeal in this case prays only 'that so much of such parts of said decree as declares, orders, adjudges and decrees as follows—to wit, "And it appearing to the said court that the said Henry Burden was the first inventor of the improvement," &c., may be reversed, and that the appellants may be restored to all things which they have lost by reason thereof.'

"But the matter complained of forms no part of the decree of the court below.

"It shows only that the judge, in reciting the inducement or reasons for entering a decree in favor of the respondents below was of opinion that they were entitled to such a decree, because they had succeeded in establishing one only of the two defenses alleged in their answer. It is the opinion of the court, on a question of fact involved in the case, but not affecting the decree."

The language of the order in the present case would seem to have the same meaning as if it had expressly stated that the action of the court resulted from the use of its discretion. It matters little what course of reasoning was pursued in order to reach the decision. It was discretionary with the court whether the appellants should be admitted as parties or not. And, in order to enable the court to exercise its discretion, it was incumbent upon it to examine the petition of the appellants and to determine from that, as well as from the arguments advanced in its support whether the petitioners had a legal right to intervene. It is a rule established by the Supreme Court that it is discretionary with the court whether persons should be admitted as parties to a pending litigation or not. By what name this discretionary power is designated by the court is of no consequence, inasmuch as it is, and must necessarily be, the discretionary power which is in reality invoked and exercised. The ESSENCE and

EFFECT of the ORDER must be considered, in order to determine what power the court exercised.

This rule was clearly defined in the case of *Potter vs. Beal*, 50 Fed. Rep., 860, in which case the United States Court of Appeals for the First Circuit said :

" The first question which meets us is whether this appeal shall be regarded as from an injunction granted by an interlocutory order under the seventh section of the act establishing this court, or whether it is to be taken hold of as from a final decree. The record states that the order was preliminary, but, of course, this is not effectual, *as it is for this court, and not for the Circuit Court, to determine that question in all cases, and the determination is to be governed by the essence of what is done and not by the appellation given to it.*"

On appeal the propriety of rightfulness of an order are the only considerations brought in question. It is wholly immaterial what were the reasons of the lower court for making the order. The only question is, Had the court the right to make it on any ground ? If it should be sustained on any ground, the ruling of the lower court must be affirmed. In the present case the only order made was a denial of the petitioners' application to intervene. This was the decision, the effective thing, and in making this order the court exercised its "*judicial discretion*," no matter what is said either within or without the order by way of stating reason or inducement. That a statement of reasons for an order or decree is without significance for any purpose of review or attempted review is well illustrated in many cases where error has been assigned in respect of the reasons or opinions of the lower courts inducing the orders or decrees from which appeals are taken.

For instance :

In *Caverly vs. Deere*, 66 Fed. Rep., 309, the Seventh Circuit Court of Appeals, speaking by WOOD, J., says :

" The opinion may be wrong and yet the finding and decree right. The question involved in the appeal is whether or not the Court erred in finding and decreeing the appeal to be without equity."

The same court in *Russell vs. Kern*, 69 Fed. Rep. 94, says :

" Error is assignable upon an order or ruling, but not upon the opinion of a court or the reasons given for a ruling."

The same court in *Evans vs. Swess Ornamental Glass Co.*, 83 Fed. Rep., 708, says :

" We are constrained to repeat and emphasize the observation that an assignment of error which is predicated upon the opinion of the court, or upon a reason given by the court for its ruling or decree, is not available (Cases). It is something done by the court—a ruling, judgment, order or decree—and not a reason therefor, which may be assigned as error."

See cases cited in the opinions last quoted.

IV.

It is well settled by numerous decisions of the Supreme Court of the United States that no one but a party to a case can appeal from a final decision rendered therein. The petitioners who sought leave to intervene never became parties to the pending causes, and therefore could not appeal even from a final decision rendered therein.

In *Connor vs. Peugh*, 18 How., 394, Mr. Justice GRIER, giving the opinion of the court, said:

"On the 5th of June, 1855, the tenant in possession came into court for the first ttme and moved to set aside the judgment and execution issued thereon and to be allowed to defend the suit for reasons set forth in her affidavit. The Court refused to grant this motion, 'whereupon the said Mary Ann Connor prayed an appeal,' &c.

"The tenant in possession having neglected to appear and have herself made defendant and confess lease, entry and ouster the judgment was properly entered against the casual ejector. *No one but a party to the suit can bring a writ of error.* The tenant having neglected to have herself made such, cannot have a writ of error to the judgment against the casual ejector.

"The motion afterwards made to have the judgment set aside and for leave to intervene was an application to the sound discretion of the court. To the action of the court on such a motion no appeal lies, nor is it the subject of a bill of exceptions or a writ of error.

See, also,
Guion vs. Liverpool, London and Globe Insurance Company, 109 U. S., 173.

The reason for this rule is obvious. The jurisdiction of the courts extends only to cases. This is true of appellate courts as well as of the lower courts (see Point V., *infra*). In order to have a case there must be *parties* as well as subject matter; and, if any one attempts to invoke the jurisdiction of an appellate court he must necessarily come as a *party* to a case, and can come only in that capacity, and must come as a party to a "case" in which a "final decision" has been rendered by the court of original jurisdiction.

This rule, as a practical matter, works no injustice to any one. The courts are open to all. Any person who has a grievance can institute a suit of his own, and bring into court all the parties necessary to a determination of his controversy. He may thus have his day

in court, and have a decision upon all matters of which he complains. There is no principle of law or of justice which demands that he have an absolute right to intervene in any suit instituted by any other person. As he has a right to institute his own suit in his own right for the determination of his controversy, so also others have similar rights, and it is neither just nor expedient that any one should have the absolute right to intrude himself into the controversies of other people. It is true that courts of equity sometimes permit a third person to intervene ; but this is done only in the discretion of the court of original jurisdiction, and a refusal to permit a third person to intervene does not deprive him of any right. If he does not become a party, no right of his can in any way be affected by proceedings in the suit. The very next day after his petition for intervention is denied, he may bring his own suit and set up all matters which he might have set up if he had been allowed to become a party. The courts are open to him the same as to all other persons.

V.

The Circuit Court of Appeals had no jurisdiction to review the order of the Circuit Court denying the petitioner's application to intervene, for the reason that such application and order do not constitute a "CASE" within the meaning of the Constitution of the United States, and of the Act of Congress of March 3, 1891, es-

tablishing the Circuit Courts of Appeals and defining their jurisdiction, and for like reason this Court has no jurisdiction to review the order of the Circuit Court of Appeals dismissing the appeal taken to it.

Section 6 of the act creating the Circuit Courts of Appeals and defining their jurisdiction provides (26 Stat. at line 826):

"That the circuit courts of appeals established by this act shall exercise appellate jurisdiction to review by appeal or by writ of error final decision in the district court and the existing circuit courts in all *cases* other than those provided for in the preceding section of this act, unless otherwise provided by law," &c.

This section gives jurisdiction to this court to review only "final decisions" in "*cases*."

The Constitution of the United States provides (Article III.):

"SECTION I. **The judicial power** of the United States shall be vested in one Supreme Court, and **in such inferior courts as the Congress may from time to time ordain and establish.** * * *

"SECTION II. (1) **The judicial power shall extend to all cases in law and equity** arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority, &c., &c.

Mr. Chief-Justice MARSHALL, in *Osborn vs. Bank of the United States*, 9 Wheat., 738, 819 (1824), says, regarding the "*case*" which must be presented in court for its action before there can be any proper exercise of the judicial power:

"This clause [Constitution, art. iii., sec. 2] enables the judicial department to receive jurisdiction to the

full extent of the constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. *It then becomes a case*, and the constitution declares that the judicial power shall extend to all cases arising under the constitution, laws and treaties of the United States."

So, also, Mr. Justice STORY, in his *Commentaries on the Constitution*, vol. 2, sec. 1646, speaking of what constitutes a *case* within the meaning of this clause, says:

"A case, then, in the sense of this clause of the constitution, arises when some subject touching the constitution, laws or treaties of the United States is submitted to the courts by a party who asserts his rights in the form prescribed by law. **In other words, a case is a suit in law or equity, instituted according to the regular course of judicial proceedings;** and when it involves any question arising under the constitution, laws or treaties of the United States, it is within the judicial power confided to the Union."

The petition presented by the Credits Commutation Company and Combination Bridge Company for leave to intervene and the order of the Circuit Court denying such petition do not constitute a case within the meaning of the constitution of the United States, or of the said act of Congress of March 3, 1891.

The only cases before the court were the foreclosure cases and the administrative case in which such intervention was sought, and the only appeal that could

have been had was an appeal from the "final decision" in those "*cases*." The petition for leave to intervene was only an application addressed to the discretion of the court in which the petitioner sought to become a party to those cases. There were not here two sets of cases, one being made up of the petition for leave to intervene and the order denying the petition, and the other the cases in which the invervention was sought. There was only one set of cases, and the orders denying the petition were made in that set of cases. There is, therefore, no ground whatever to claim, and it cannot be claimed, that the petitioner was a party to any *separate* "*case*," and that an appeal can be taken from the order denying his petition as from a final decision in a separate case.

As was said in Ex Parte Cutting, 94 U. S., 22: "No appeal lies from the order of Oct. 3, refusing them leave to become parties, for that was only a motion in the cause and not an independent suit in equity appealable here."

It requires but little consideration to see that this so-called appeal brings no "case" before this Court. The Court will notice that the so-called "transcripts of record" in these proceedings are entitled "Credits Commutation Company and Combination Bridge Company, Appellants," and that in each Record the appellee is the complainant in the true case in which the petition was filed;—as if the Credits Commutation Company and the Combination Bridge Company were parties to cases. The fact is clearly otherwise. A case in an appellate court must have parties as well as in any other court, and in an appellate court those only can be parties who were parties in the court of original

jurisdiction. The Credits Commutation Company and the Combination Bridge Company were not parties to any case in the Circuit Court. They did not file any complaint, nor was any filed against them; nor was any subpœna or other process issued at their instance, or directed to them; nor did they become parties after any of the suits were begun.

That the petition for leave to intervene and the order denying such petition did not constitute a separate case within the meaning of the Constitution of the United States and of the act of Congress of March 3, 1891 (26 Stat., 826), is further shown by the decisions of this Court with regard to cross bills.

A cross-bill in a suit in equity is an application to the court of much higher dignity than a mere petition for leave to intervene, for several reasons: First, because a cross-bill is necessarily filed by a party to the main suit; and, second, because a cross-bill involves or should involve the same matters as the main suit; and, yet in many instances this Court has held that it had no jurisdiction of an appeal from a decree dismissing a cross-bill alone.

For example, in *Ayres vs. Carver*, 17 How., 591, the court had before it a decree of a district court which dismissed a cross-bill; and *this Court dismissed for want of jurisdiction an appeal from such decree.* The Court said, by NELSON, J. (p. 595):

"It is manifest, from this brief reference to the doctrine, that any decision or decree in the proceedings upon the cross-bill is not a final decree in the suit, and, therefore, not the subject of an appeal to this court, under the 22d section of the judiciary act.

The decree, whether maintaining or dismissing the bill, disposes of a proceeding simply incidental to the principal matter in litigation, and *can only be reviewed on an appeal from the final decree disposing of the whole case.* That appeal brings up all the proceedings for re-examination, when the *party* aggrieved by any determination in respect to the cross-bill has the opportunity to review it, as in the case of any other interlocutory proceeding in the cause.

"For these reasons *the appeal in this case must be dismissed for want of jurisdiction*, and the case remanded to the court below.

See, also, to the same effect :

Ex parte Railroad Company, 95 U. S., 221, 225.

If a cross-bill is not a separate case so that a decision dismissing on the merits is not thus reviewable, much less is a mere motion for leave to intervene. There is no jurisdiction of an appeal from the denial of such motion.

Threfore, even if the petitioners had been parties to the cases in which the order was made denying the petition, they could not make separate and direct appeal from such order as if the petition and order constituted a "case" for the appellate court. There is only one set of cases, and these appeals could in no event be brought up as separate cases.

For the convenience of the Court we print in an appendix so much of the opinion of the CIRCUIT COURT OF APPEALS as has not already been printed at pages 4 *et seq.* of this brief.

VI.

Motion to Affirm.

If the Court should hold, for any reason, that it has jurisdiction to consider these appeals and dispose of them otherwise than by dismissal, then we submit that the decisions of the court below should be affirmed upon our motion to affirm, coupled, under the rule, with the motion to dismiss.

WINSLOW S. PIERCE,
LAWRENCE GREER,
Counsel for F. Gordon Dexter and Oliver Ames, Second, Trustees, Appellees.

JOHN F. DILLON,
WILLIAM R. KELLY,
G. M. LAMBERTSON,
Counsel for The Railway Company and Receivers, Appellees.

APPENDIX.

Opinion of Circuit Court of Appeals.

(Omitting Statement of Facts printed *ante*, pp. 4 *et seq.*)

"The motion to dismiss the several appeals is grounded on the proposition that the order from which the several appeals were taken was not a final judgment or decree from which an appeal will lie to this court, and upon the further proposition that the action of the lower court in refusing leave to intervene is not is not reviewable on appeal, inasmuch as it rested in the sound discretion of the chancellor to admit or reject the intervention. Both of these positions are, in our opinion, well taken. The order denying leave to intervene was not 'final' within any of the definitions usually given of a final order or decree, inasmuch as it did not dispose of the petitioners' alleged right to form a junction with the main line of the Union Pacific Railroad, which was the substantial right asserted, but left them at full liberty to litigate that question by an original bill, or by any other method of procedure which they saw fit to adopt. The Trial Court could not, and did not, finally adjudicate any of the questions which were presented by the intervening complaint for the reason that it refused to give the petitioners a standing in Court to be heard with respect to such questions, and also refused to permit the intervening complaint to be filed and become a part of the record. None of the issues, therefore, which were tendered by the petitioners in their intervening complaint ever passed under judicial review in such a manner to estop the petitioners from tendering like issues on any future occasion because the Trial Court refused to allow such issues to be incorporated into the pending suits in such a form that they could be tried and determined. When such action is taken—that is to say, when leave to intervene in an equity case is asked and refused—the rule, so far as we are aware, is well settled that the order thus made denying leave to intervene is not regarded as a final determination of the merits of the

claim on which the intervention is based, but leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding. Such orders not only lack the finality which is necessary to support an appeal, but it is usually said of them that they cannot be reviewed, because they merely involve an exercise of the discretionary powers of the trial court (*Ex parte* Cutting, 94 U. S., 14; Hamlin vs. Trust Co., 47 U. S. App., 422, 428, 429, 24 C. C. A., 271, and 78 Fed., 664; Jones and Laughlins vs. Sands, 51 U. S. App., 153, 157, 25 C. C. A., 233, and 79 Fed., 913; *In re* Street, Petitioner, 8 U. S. App., 645, 650, 10 C. C. A., 446, 62 Fed., 218).

"It is doubtless true that cases may arise where a denial of the right of a third party to intervene therein would be a practical denial of certain relief to which the intervenor is fairly entitled, and can only obtain by an intervention. Cases of this sort are those where there is a fund in court undergoing administration, to which a third party asserts some right which will be lost in the event that he is not allowed to intervene before the fund is dissipated. In such cases an order denying leave to intervene is not discretionary with the chancellor, and will generally furnish the basis for an appeal, since it finally disposes of the intervenor's claim by denying him all right to relief. The cases at bar, however, are not of that character. The petitioners were under no obligation to intervene in the litigation against The Union Pacific Railway Company to preserve their alleged right to form a junction with the road of that company when they should have completed their own road to a suitable junction point. The question which they sought to litigate in the pending litigation could, we think, with more propriety and with less difficulty have been litigated by an independent bill after they had completed or were about completing their line to a suitable junction point. Prior to that time the questions which they sought to raise by means of the intervening petition were speculative questions, which the lower court, as we think, very properly refused to consider or determine.

"It was suggested in argument that, as the lower court saw fit to insert a clause in its order that it had not refused leave to intervene "as a matter of discretion" but because the petitioners had no legal right to intervene, therefore the motion to dismiss is not tenable, so

far as it is based on the discretionary character of the order. The answer to this suggestion is that the trial court, by inserting such a clause in its orders explanatory thereof, could not give an effect to the order which was in any respect different from the effect which it had by virtue of the nature of the proceeding in which the order was made. The intervening petition merely invoked the discretionary power of the court, and it could exercise no other power in the premises, whatever the purpose of the court or its own declarations on the subject may have been. The fact is that the lower court simply exercised its discretionary authority in denying leave to intervene, and it did not succeed in rendering a judgment upon the merits of the petitioners' claim which will conclude them in any subsequent suit, although it may have intended to do so. As it is now well settled, since the decision in McLish vs. Roff, 141 U. S., 661; 12 Sup. Ct., 118, that an appeal will only lie to this court from orders or decrees which are final in their character, and which involve something more than the exercise of purely discretionary powers, except in some cases for which special provision is made by the seventh section of the act under which this court was created (26 Stat., 826, C. 517), it follows that the appeal cannot be entertained, and that the motions to dismiss the same must be sustained. It is so ordered."

FEB 24 1900
JAMES H. MCKENNEY, Clerk

By. of Atty. Gen. (Griggs's Brief)

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Feb. 24, 1900.

No. 220.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY,
Appellants,

vs.

THE UNITED STATES OF AMERICA ET AL.,
Appellees.

Also No. 234.

SAME APPELLANTS,

vs.

F. GORDON DEXTER and OLIVER AMES, Second, Trustees, ET AL.,
Appellees.

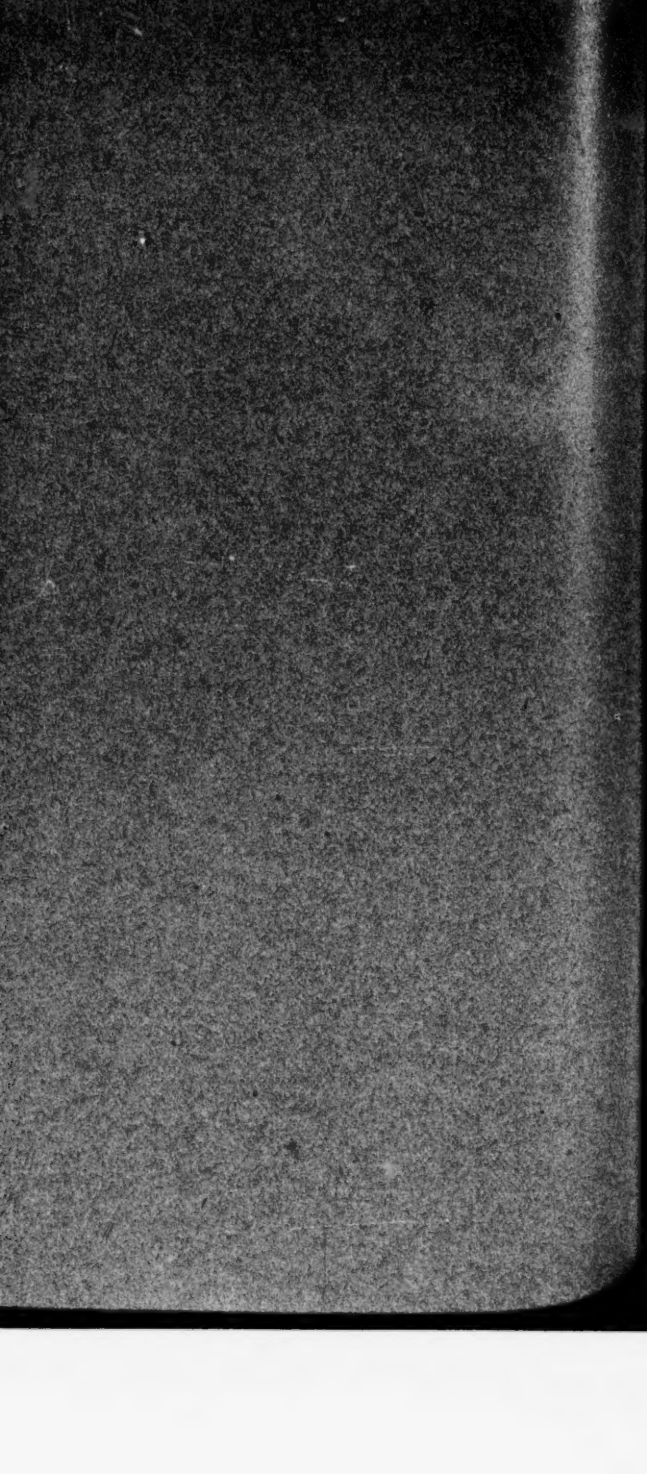
APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Brief for Appellee The United States of America on Motions to Dismiss Appeals.

JOHN W. GRIGGS,
Attorney-General.

JOHN C. COWIN,
Special Counsel for United States, Appellee.

C. G. Burgoyne, Walker and Centre Streets, N. Y.



Supreme Court of the United States.

OCTOBER TERM, 1899.

THE CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY, Appellants, vs. THE UNITED STATES OF AMERICA *et al.*, Appellees.	No. 233.
THE CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY, Appellants, vs. F. GORDON DEXTER and OLIVER AMES, Second, Trustees, *et al.*, Appellees.	No. 234.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Brief for appellee The United States of America on motions to dismiss appeals.

STATEMENT.

In May, 1897, the Credits Commutation Company filed in the Circuit Court of the United States for the District of Nebraska a petition for leave to intervene and become a party in certain causes then pending in that Court. Subsequently, an amendment to that petition, and a like petition of the Combination Bridge Company were filed in said causes (Rec. No. 233, pp. 43, 149, 151).

One of the causes in which intervention was sought was a suit in equity commenced in January, 1897, by the United States of America vs. The Union Pacific Railway Company and others for the foreclosure of the subsidy mortgage and lien of the Government upon the Union Pacific Railroad, extending from Council Bluffs, Iowa, to a point five miles west of Ogden, Utah, the subsidy debt amounting, with accrued interest, to about $58,000,000.

The other cause was a suit in equity brought by F. Gordon Dexter and Oliver Ames, Second, as trustees of the first mortgage of The Union Pacific Railroad Company, for the foreclosure of that mortgage covering the same property. In this suit the United States had entered its appearance as a party defendant.

At the time the intervention was sought these causes were about ready for final decree.

The petition of the Credits Commutation Company for leave to intervene (Rec., pp. 43 *et seq.*) alleged as grounds of the application that the petitioner was the owner of the capital stock of a combined railroad and wagon bridge then recently completed across the Missouri River at Sioux City, Iowa, and that, as beneficiary under an assignment, it was entitled to three-

fourths of the capital stock of the Sioux City and Northern Railroad, extending northerly from Sioux City about one hundred miles (said Sioux City and Northern stock carrying with it the stock of a terminal company having terminal privileges in Sioux City), and the stock of the Sioux City, O'Neill and Western Railroad, running one hundred and thirty miles west from Sioux City, Iowa, to O'Neill, Nebraska. The petitioner claimed further rights, then in controversy and litigation, respecting prior claims upon the properties of these several companies, and alleged that the petitioner owned or held a controlling interest in certain other industries at Sioux City, and that it was one of the motives or objects of the petitioner in its organization and in the combinations of its properties to secure "a connection thereof with The Union Pacific Railway Company by building or causing to be built and extended a railroad from said Sioux City in a general southwesterly direction to a junction with the said Union Pacific Railway as aforesaid."

The petition was largely argumentative and generally adverse to the proceedings of the United States in the foreclosure of its statutory lien. The petitioner contended that the Government was without power to foreclose and sell under its lien the property of the railway company to satisfy the subsidy debt, and that the only remedy of the Government was to possess the property by forfeiture and, if necessary, redemption of prior liens, thereby acquiring ownership of the property. The petitioner also sought to intervene for the alternative purpose of securing such provisions in the decree, in case of foreclosure, as it claimed would be useful to protect a right, alleged to exist under the Congressional legislation incorporating the railroad company, to con-

nect its properties with the Union Pacific Railroad, in the event that it should carry out its purpose to build any of its properties to a point of connection.

The petition of the Combination Bridge Company (Rec. pp. 151 *et seq.*), the stock of which was owned by the Commutation Company, was in substance an affirmation and adoption of the matters contained in the Commutation Company's petition. It included a recital of the corporate authority of the petitioner and a prayer for leave to intervene in the event of denial of the Commutation Company's petition.

Orders were entered by the Circuit Court denying the prayers of the petitions for leave to interve. For convenient reference this order of the Circuit Court in the Government case (which is identical in terms with that made in the other causes) is printed as an appendix to this brief. From these orders appeals to the Circuit Court of Appeals were taken (Rec., p. 157). Subsequently, motions were made by the United States to dismiss the appeals taken to the Circuit Court of Appeals (Rec., pp. 173–4), and these motions were by that Court sustained and the appeals dismissed (Rec., p. 181). From the orders of the Circuit Court of Appeals sustaining these motions and dismissing the appeals the present appeals to this Court were taken. The present motions are made to dismiss the appeals to *this* Court from the orders of the Circuit Court of Appeals dismissing the appeals to *that* Court.

The grounds of the present motions to dismiss are as follows :

First. The order of the Circuit Court of the United States for the District of Nebraska, from which said appeal to the Circuit Court of Appeals was taken was

not a FINAL DECISION of the said Circuit Court of the United States within the meaning of Section 6 of the Act of Congress, approved March 3, 1891, entitled: "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States, and for other purposes," and hence said Circuit Court of Appeals had no jurisdiction over the appeals taken to it, and for like reason the Supreme Court has no jurisdiction over the present appeals.

SECOND. The application of the appellants for leave to intervene in the pending causes was addressed to the judicial discretion of the Circuit Court of the United States for the District of Nebraska, and the discretionary powers exercised by said Court in its action in denying such application could not be reviewed by the Circuit Court of Appeals and will not be reviewed by this Court.

THIRD. The application to intervene and the appeal from the order denying said application, and from the order of the Circuit Court of Appeals dismissing the appeals taken to that Court are attempted proceedings and litigation on the part of the appellants against the United States of America which has never consented that such proceedings be brought against it, but has objected and still does object to the same.

And also the ground resting in the facts appearing by way of supplemental statement in the motion, from which it appears that the foreclosures have long since gone to final decrees and sale and that the debt and claim of the Government have been fully paid in cash out of the proceeds of said sales.

ARGUMENT.

The Circuit Court of Appeals had no jurisdiction over the appeals taken to it, and consequently the Supreme Court has no jurisdiction over the present appeals, and the present motions in this court to dismiss the appeals taken to it must be sustained.

The jurisdiction of the Federal appellate courts is limited by statute and does not (except in certain specified cases, of which the present proceeding is not one) embrace the review of other than FINAL DECISIONS in cases presented by appeal, writ of error or *certiorari*.

The decision, in order to be reviewable, must be FINAL, and the Act of Congress of March 3, 1891, establishing the Circuit Court of Appeals has made no change in this fundamental requirement.

McLish vs. Roff, 141 U. S., 661.
Chicago, St. P., Minn. & O. Ry. Co. vs. Roberts, 141 U. S., 690.
American Construction Co. vs. Jacksonville, &c., R. R. Co., 148 U. S., 372.
Kirwan vs. Murray, 170 U. S., 205.

The orders of the Circuit Court of the United States for the District of Nebraska, denying the appellants leave to intervene, were not FINAL DECISIONS of that Court. Hence they were not appealable orders. This is perfectly well settled.

United States vs. Girault, 11 How., 22.
Dainese vs. Kendall, 119 U. S., 53, 54.
Ex parte Cutting, 94 U. S., 414.
Toledo, St. L. & Kansas City Ry. Co. vs. Continental Trust Co., 95 Fed. Rep., 497, 536.

Orders granting or denying leave to intervene in pending cases are discretionary and hence not appealable. Decisions which rest in the judicial discretion of a court of original jurisdiction cannot be reviewed in an appellate court.

Cook vs. Burnley, 11 Wallace, 672, 676.
Ex parte Cutting, *supra.*
Connor vs. Peugh, 18 How., 394.
Hamlin vs. Railway Company, 78 Fed. Rep., 664.
Lewis vs. Railroad Co., 62 Fed. Rep., 218.
Smith vs. Glasgow Investment Co., 47 Fed. Rep., 332.
United States vs. Thomas, 151 U. S., 577.

The character of the order of the Circuit Court was not altered by reason of the recital made therein that the petitions for leave to intervene were denied "not as a matter of discretion, but because such petitions do not state facts sufficient to show that the petitioners or either of them have a legal right to intervene."

Recitals by a court, in its order, of opinions of law or fact, or by way of inducement, are immaterial and give to such orders or decrees no different aspect or character for the purpose of review or of determining whether they are reviewable. Such determination is to be governed solely by the essence of what is done and not by the appellation given to it in the order.

Corning vs. Troy Iron and Nail Factory, 15 How., 451, 464.
Potter vs. Beal, 50 Fed. Rep., 860.
Caverly vs. Deere, 60 Fed. Rep., 309.
Russell vs. Kern, 69 Fed. Rep., 94.
Evans vs. Suess Ornamental Glass Co., 83 Fed. Rep., 708.

Applications by strangers for leave to intervene in pending causes are addressed to and invoke the discretionary power of the Court and in the determination of such applications the discretionary power is, in judicial contemplation, the only power exercised or exercisable.

Whether discretionary or not, however, the order denying the application of the appellants for leave to intervene in the pending causes lack the primary and indispensable requirement for appeal—*i. e.*, finality.

The appeals in this Court have titles wholly different from those of the causes in the Circuit Court in which the proceedings for intervention were had. The appellants have undertaken to carve out of the pending causes for the foreclosure of mortgages certain proceedings composed of petitions for leave to intervene and the orders denying these petitions, and to make these proceedings, which are in reality only an incident in the pending causes, the subject of a separate and independent appeal. There is no CASE, there are no PARTIES, there is no FINALITY OF DECISION, the three elements which are requisite in order to confer jurisdiction upon the appellate courts.

The attempted intervention and the appeals from the orders denying the same are efforts on behalf of the appellants to proceed against the United States in its own courts and without its consent.

The anomalous character of the attempted interventions becomes even more conspicuous in this phase of the matter. While assuming to supplant the constituted officers of the United States in the protection of the interests of the Government, the scheme of the petitioners as disclosed by their petitions (Rec., p. 187 *et seq.*) was adverse to the foreclosure and remedies which

were then being pursued on behalf of the United States and which resulted in the payment of the entire debt to the Government in cash.

The outcome of these causes has become matter of public history through the messages of the President to Congress and the reports of the Attorney-General, and this outcome is thus properly a subject of judicial cognizance. The foreclosure instituted by the Government and that instituted by the trustees of the prior lien were carried to final decrees and sales, and the Government realized in cash the entire amount of its indebtedness, principal and interest —namely, more than $58,000,000. This amount has long since been paid, and the property was long since transferred to the purchasers subject to ample protection in the decrees of all rights of the Government in all other capacities than that of creditor, as to which its rights were fully satisfied.

In the light of these facts—of which the Court will take judicial cognizance—it becomes evident that the prosecution of the present appeals can have no purpose other than those improper purposes within the contemplation of the rule of this Court under which the alternative motion to affirm is made by the appellee.

The motions to dismiss the present appeals in this Court should be sustained.

JOHN W. GRIGGS,
Attorney-General.
JOHN C. COWIN,
Special Counsel for United States.

APPENDIX.

Copy of Order of Circuit Court Dismissing Petitions for Leave to Intervene in the Government Cause.

UNITED STATES CIRCUIT COURT,

DISTRICT OF NEBRASKA.

IN EQUITY.

UNITED STATES OF AMERICA,
Complainant,

vs.

THE UNION PACIFIC RAILWAY COMPANY ET AL.,
Defendants.

And now, this cause coming on to be heard on the petition of the Credits Commutation Company for leave to intervene in the above-entitled causes, and also upon the amendments to said petition presented on the hearing and taken as part of said petition, and also upon the supporting petition of the Combination Bridge Company, also presented to the Court on said hearing, and upon the order of this Court made on April 28th, 1897, upon the said petition of the Credits Commutation Company; and it appearing to the Court here that the several parties had been notified of the time and place of said hearing as specified and

required by the said order of this Court, and there appearing upon this hearing for the Credits Commutation Company and for the Combination Bridge Company, petitioners, Mr. John C. Coombs and Mr. Henry J. Taylor, for the Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, John W. Doane and Frederic R. Coudert, Receivers thereof, Mr. John F. Dillon and Mr. W. R. Kelly, for F. Gordon Dexter and Oliver Ames, 2nd, trustees, Mr. Winslow S. Pierce, and for the United States of America, Mr. George Hoadly and John C. Cowin; and now, the Court having heard arguments of counsel and being fully advised in the premises, it is

Ordered, that the prayers of the petitioners for leave to intervene herein be and the same are hereby denied, not as matter of discretion, but because said petitions do not state facts sufficient to show that the petitioners or either of them have a legal right to intervene, and upon prayer of the petitioners an appeal to the Circuit Court of Appeals is hereby allowed. The bond on such appeal is fixed at the sum of one thousand dollars.

Dexter and Ames, trustees, complainants, and the United States of America, the Union Pacific Railway Company and the said Receivers, by their respective counsel duly excepting to such part of this order as grants an appeal.

May 22, 1897.

WALTER H. SANBORN,
Circuit Judge.

No. 233.

Office Supreme Court U.
FILED
JAN 27 1900
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1899. No. 233.

THE CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,
Appellants,

vs.

THE UNITED STATES ET AL.,
Appellees.

TO JOHN C. COOMBS, ESQ., and HENRY J. TAYLOR, ESQ.,
Counsel for Appellants above named :

Please take notice, that on the 26th day of February, 1900, at the opening of the Court, or as soon thereafter as counsel can be heard, the motions, of which copies are herewith served on you, will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Also herewith served is a copy of the brief or argument to be submitted with the said motions in support thereof.

Dated January 27, 1900.

WINSLOW S. PIERCE.

Counsel for appellees F. Gordon Dexter and Oliver Ames, Second, Trustees, for the purposes of these motions.

f° 233.

FILED
JAN 27 1900
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1899. NO. 233.

THE CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,
Appellants,

vs.

THE UNITED STATES ET AL.

MOTION TO DISMISS OR AFFIRM BY APPELLEES F. GORDON DEXTER AND OLIVER AMES, SECOND.

Come now the appellees herein, F. Gordon Dexter and Oliver Ames, by Winslow S. Pierce, their counsel, appearing in that behalf, and move the Court to dismiss the appeal in the above-entitled cause for want of jurisdiction, because:

FIRST. The order of the Circuit Court of the United States for the District of Nebraska, from which the said appeal is taken, is not a final decision of the said Circuit Court of the United States within the meaning of Section 6 of the Act of Congress, approved March 3d, 1891, entitled, "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States, and for other purposes," and hence said Circuit Court of Appeals had no jurisdiction of the appeals taken to it, and, for like reason, the Supreme Court has no jurisdiction of the present appeals.

SECOND. It was within the legal discretion of the Circuit Court of the United States for the District of

Nebraska to grant or deny the application of the appellants for leave to intervene in the pending causes, and that Court in denying such application exercised its discretionary powers, and its action could not be reviewed by the Circuit Court of Appeals and will not be reviewed by this court.

THIRD. The appellants never became parties to the suits in which intervention was sought and in which the orders refusing such intervention were entered.

FOURTH. The petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the Act of Congress of March 3d, 1891, establishing the Circuit Courts of Appeals and defining their jurisdiction, and hence:

FIFTH. The order of the Circuit Court of the United States for the District of Nebraska, being non-appealable, and properly so held by the Circuit Court of Appeals, the same will not be reviewed by the Supreme Court on appeal from the order of the said Circuit Court of Appeals.

And the said appellees, by counsel as aforesaid, also move the court to affirm the said judgment or decree from which said appeal purports to have been taken, because, although the record in the said cause may show that this court has jurisdiction in the premises, yet it is manifest that the said appeal was taken for delay only.

WINSLOW S. PIERCE.

Counsel for appellees F. Gordon Dexter and Oliver Ames, Second, Trustees, for the purpose of this motion.

No. 233.

FILED
JAN 27 1900
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1899. No. 233.

THE CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,
Appellants,

vs.

THE UNITED STATES,
Appellees.

TO MESSRS. JOHN C. COOMBS, ESQ., AND HENRY J. TAYLOR, ESQ., COUNSEL FOR APPELLANTS ABOVE NAMED:

Please take notice that on the 12th day of February, 1900, at the opening of the Court, or as soon thereafter as counsel can be heard, the motions, of which copies are herewith served on you, will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Also herewith served is a copy of the brief or argument to be submitted with the said motions in support thereof.

Dated January 27, 1900.

WILLIAM R. KELLY,
Counsel for appellees S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers, and The Union Pacific Railway Company.

No. 233.

Office Supreme Court U.
FILED
JAN 27 1900
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1899, No. 233.

The CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY, appellants,

vs.

The UNITED STATES ET. AL.

MOTION TO DISMISS OR AFFIRM BY APPELLEES THE UNION PACIFIC RAILWAY COMPANY AND S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, FREDERIC R. COUDERT AND JOHN W. DOANE, RECEIVERS.

Come now the appellees herein, The Union Pacific Railway Company, S. H. H. Clark, Oliver W. Mink E. Ellery Anderson, Frederic R. Coudert and John W. Doane, receivers, by W. R. Kelly, their counsel, appearing in that behalf, and move the court to dismiss the appeal in the above-entitled cause for want of jurisdiction, because :

FIRST. The order of the Circuit Court of the United States for the District of Nebraska, from which the said appeal is taken, is not a final decision of the said Circuit Court of the United States within the meaning of Section 6 of the Act of Congress approved March 3rd, 1891, entitled : "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States, and for other purposes," and hence said Circuit Court of Appeals had no jurisdiction of the appeals taken to it, and, for like reason, the Supreme Court has no jurisdiction of the present appeals.

SECOND. It was within the legal discretion of the Circuit Court of the United States for the District of

Nebraska to grant or deny the application of the appellants for leave to intervene in the pending causes, and that Court in denying such application exercised its discretionery powers and its action could not be reviewed by the Circuit Court of Appeals and will not be reviewed by this Court.

THIRD. The appellants never became parties to the suits in which intervention was sought and in which the orders refusing such intervention were entered.

FOURTH. The petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the Act of Congress of March 3d, 1891, establishing the Circuit Courts of Appeals and defining their jurisdiction, and hence :

FIFTH. The order of the Circuit Court of the United States for the District of Nebraska, being non-appealable and properly so held by the Circuit Court of Appeals, the same will not be reviewed by the Supreme Court on appeal from the order of the said Circuit Court of Appeals.

And the appellees, by counsel as aforesaid, also move the court to affirm the said judgment or decree from which said appeal purports to have been taken, because although the record in the said cause may show that this court has jurisdiction in the premises, yet it is manifest that the said appeal was taken for delay only.

WILLIAM R. KELLY,

Counsel for appellees The Union Pacific Railway Company, and S. H. H. Clark *et al.*, Receivers, for the purpose of this motion.

No. 234.

FILED
JAN 27 1900
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1899, NO. 234.

THE CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,
Appellants,

vs.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*,
Appellees.

TO MESSRS. JOHN C. COOMBS, ESQ., and HENRY J. TAYLOR, ESQ., Counsel for appellants above named:

Please take notice, that on the 26th day of February, 1900, at the opening of the Court, or as soon thereafter as counsel can be heard, the motions, of which copies are herewith served on you, will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Also herewith served is a copy of the brief or argument to be submitted with the said motions in support thereof.

Dated January 27, 1900.

WILLIAM R. KELLY

Counsel for Appellees, S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers, and the Union Pacific Railway Company.

No. 234.

Office Supreme Court U. S.
FILED
JAN 27 1900
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1899. NO. 234.

THE CREDITS COMMUTATION COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,
Appellants,

vs.

F. GORDON DEXTER and OLIVER AMES, SECOND, ET AL.

MOTION TO DISMISS OR AFFIRM BY APPELLEES THE UNION PACIFIC RAILWAY COMPANY AND S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, FREDERIC R. COUDERT AND JOHN W. DOANE, RECEIVERS.

Now come the appellees herein, The Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, by W. R. Kelly, their counsel, appearing in that behalf, and move the court to dismiss the appeal in the above-entitled cause for want of jurisdiction, because:

FIRST. The order of the Circuit Court of the United States for the District of Nebraska, from which the said appeal is taken, is not a final decision of the said Circuit Court of the United States within the meaning of Section 6 of the Act of Congress approved March 3rd, 1891, entitled: "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States and for other purposes," and hence said Circuit Court of Appeals had no jurisdiction of the appeals taken to it, and, for like reason, the Supreme Court has no jurisdiction of the present appeals.

SECOND. It was within the legal discretion of the Circuit Court of the United States for the District of

Nebraska to grant or deny the application of the appellants for leave to intervene in the pending causes, and that court in denying such application exercised its discretionery powers and its action could not be reviewed by the Circuit Court of Appeals and will not be reviewed by this court.

THIRD. The appellants never became parties to the suits in which intervention was sought and in which the orders refusing such intervention were entered.

FOURTH. The petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the Act of Congress of March 3rd, 1891, establishing the Circuit Courts of Appeals and defining their jurisdiction, and hence:

FIFTH. The order of the Circuit Court of the United States for the District of Nebraska, being non-appealable and properly so held by the Circuit Court of Appeals, the same will not be reviewed by the Supreme Court on appeal from the order of the said Circuit Court of Appeals.

And the said appellees, by counsel as aforesaid, also move the court to affirm the said judgment or decree from which said appeal purports to have been taken, because, although the record in the said cause may show that this court has jurisdiction in the premises, yet it is manifest that the said appeal was taken for delay only.

WILLIAM R. KELLY,

Counsel for appellees The Union Pacific Railway Company and S. H. H. Clark *et al.*, Receivers, for the purpose of this motion.

No.

Sup

The
and
Co

F. Go

To Jo

Ple
Febr
there
whic
mitte
the
serve
mitte
Da

No. 234.

SUPREME COURT U.S.
FILED
JAN 27 1900
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1899, NO. 234.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY,
Appellants,
vs.
F. GORDON DEXTER and OLIVER AMES, Second, Trustees, *et al.*,
Appellees.

To JOHN C. COOMBS, ESQ., and HENRY J. TAYLOR, ESQ., Counsel for Appellants above named:

Please take notice, that on the 26th day of February, 1900, at the opening of the Court, or as soon thereafter as counsel can be heard, the motions, of which copies are herewith served on you, will be submitted to the Supreme Court of the United States for the decision of the Court thereon. Also herewith served is a copy of the brief or argument to be submitted with the said motions in support thereof.

Dated January 27, 1900.

WINSLOW S. PIERCE.
Counsel for appellees F. Gordon Dexter and Oliver Ames, Second, Trustees for the purposes of these motions.

No. 234.

Supreme Court U. S.
FILED
FEB 24 1900
JAMES H. McKENNEY,
Clerk

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 234.

THE CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,
Appellants,

vs.

F. GORDON DEXTER and OLIVER AMES, SECOND, Trustees, *et al.*,
Appellees.

To JOHN C. COOMBS, ESQ., AND HENRY J. TAYLOR, ESQ.,
COUNSEL FOR APPELLANTS ABOVE NAMED:

Please take notice that on the 26th day of February, 1900, at the opening of the Court, or as soon thereafter as counsel can be heard, the motions, of which copies are herewith served on you, will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Also herewith served is a copy of the brief or argument to be submitted with the said motions in support thereof.

Dated January 27, 1900.

John W. Griggs.

Attorney-General.

John C. Cowin.

Special Counsel for the United States,
Appellee.

No. 234. C. G. Burgoyne's Printing Business, 146-150 Centre St., N. Y.

FEB 24 1900

JAMES H. McKENNEY, Clerk

Motion Papers for U. S.

Filed Feb. 24, 1900.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 234.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY,
Appellants,

vs.

F. GORDON DEXTER and OLIVER AMES, SECOND, TRUSTEES *et al.*,
Appellees.

Motion to Dismiss or Affirm by Appellee The United States of America.

Now comes The United States of America, appellee herein, by John W. Griggs, Attorney-General, and by John C. Cowin, Special Counsel, appearing for the purpose of making this motion, and moves the Court to dismiss the appeal in the above-entitled cause for want of jurisdiction, because:

FIRST. The order of the Circuit Court of the United States, for the District of Nebraska, from which the said appeal was taken to the Circuit Court of Appeals, is not a final decision of the said Circuit Court of the United States within the meaning of Section 6 of the

Act of Congress, approved March 3, 1891, entitled: "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States, and for other purposes," and, hence, said Circuit Court of Appeals had no jurisdiction of the appeal as taken to it, and the Supreme Court has no jurisdiction of the present appeal.

SECOND. The application of the appellants for leave to intervene in the pending cause was addressed to the judicial discretion of the Circuit Court of the United States, for the District of Nebraska, and the discretionary powers exercised by said Court in its action in denying such application could not be reviewed by the Circuit Court of Appeals and will not be reviewed by this Court.

THIRD. The application to intervene and the appeal from the order denying said application are attempted proceedings and litigation on the part of the appellants against the United States of America, which has never consented that such proceedings be brought against it, but has objected, and still does object, to the same.

And, by way of supplemental statement of facts which have occurred in the Circuit Court in the cause in which the above-entitled appeal was taken, since said appeal, and for the information of this Court, it is now further respectfully represented and shown:

That in said cause in which said appeal was taken from the order of the Circuit Court of the United States for the District of Nebraska, denying to petitioners leave to intervene, which said cause was brought to foreclose the First Mortgage of The Union Pacific Railroad Company and to sell the railroad and telegraph property covered thereby, a final decree of foreclosure and sale was made and entered in the month of July, 1897 after said appeal

was taken from said order, and that, under and in pursuance of said final decree, a sale of all the railroad and telegraph lines of The Union Pacific Railway Company covered by said mortgage was duly and legally made on November 2, 1897, and which said sale was thereupon duly reported by the Special Master directed in said decree to make the same, and was in all respects confirmed by the said Court, and thereupon said decree and sale were duly and fully executed and consummated by the execution and delivery by said Special Master to the purchasers, as provided in said decree, of a good and sufficient conveyance of all of said property, said purchase price having been paid and having been applied as in said decree provided.

That neither said final decree nor said decree of confirmation of sale have been appealed from, reversed or in any way modified, nor have any steps been taken toward any such appeal, reversal or modification, and said decrees remain in full force and effect, and the time for appeal therefrom has long since elapsed.

That the subject matter of said foreclosure cause having long since passed out of the hands of the Circuit Court, it is manifest that the attempted prosecution of said appeal is futile and can have no result, even if jurisdiction to entertain the same existed and if said appeal could in any event be sustained.

The United States, appellee, in support of this its supplemental statement and further motion, files herewith, as part hereof, a certified copy of the final order and decree entered in said cause ratifying, approving and confirming said sale, marked "Exhibit A" and endorsed with the number and title of this case, and which it is asked may be taken as part hereof as fully as if the same were here fully recited instead of being referred to as an exhibit.

Wherefore the United States of America, appellee, represents the foregoing considerations as further grounds of this its motion.

And the said appellee the United States of America further, and in the alternative, moves the Court to affirm the ruling, order and decree of the Circuit Court of Appeals dismissing the appellant's appeal to said last-mentioned Court, for the reason that, if it should be held that this Court has jurisdiction yet, said appeal to this Court was obviously taken for purposes of delay and should be dismissed.

John W. Griggs.

Attorney-General.

John C. Cowin.

Special Counsel for the United States,
Appellee.

No. 234.

Office Supreme Court U. S.
FILED
JAN 27 1900
JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1899.—No. 234.

THE CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,
Appellants,

vs.

F. GORDON DEXTER and OLIVER AMES, SECOND, ET AL.

MOTION TO DISMISS OR AFFIRM BY APPELLEES F. GORDON DEXTER AND OLIVER AMES, SECOND.

Come now the appellees herein F. Gordon Dexter and Oliver Ames by Winslow S. Pierce, their counsel, appearing in that behalf, and move the court to dismiss the appeal in the above-entitled cause for want of jurisdiction, because:

FIRST. The order of the Circuit Court of the United States, for the District of Nebraska, from which the said appeal is taken, is not a final decision of the said Circuit Court of the United States within the meaning of Section 6 of the Act of Congress approved March 3rd, 1891, entitled, "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States, and for other purposes," and hence said Circuit Court of Appeals had no jurisdiction of the appeals taken to it, and, for like reason, the Supreme Court has no jurisdiction of the present appeals.

SECOND. It was within the legal discretion of the Circuit Court of the United States, for the District of

Nebraska, to grant or deny the application of the appellants for leave to intervene in the pending causes, and that court in denying such application exercised its discretionery powers and its action could not be reviewed by the Circuit Court of Appeals and will not be reviewed by this court.

THIRD. The appellants never became parties to the suits in which intervention was sought and in which the orders refusing such intervention were entered.

FOURTH. The petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene and the order denying such petitions do not constitute a case within the meaning of the Constitution of the United States and of the Act of Congress of March 3rd, 1891, establishing the Circuit Courts of Appeals and defining their jurisdiction, and hence :

FIFTH. The order of the Circuit Court of the United States, for the District of Nebraska, being non-appealable and properly so held by the Circuit Court of Appeals, the same will not be reviewed by the Supreme Court on appeal from the order of the said Circuit Court of Appeals.

And the said appellees, by counsel as aforesaid, also move the court to affirm the said judgment or decree from which said appeal purports to have been taken, because, although the record in the said cause may show that this court has jurisdiction in the premises, yet it is manifest that the said appeal was taken for delay only.

WINSLOW S. PIERCE.

Counsel for appellees F. Gordon Dexter and Oliver Ames, Second, Trustees, for the purpose of this motion.

No. 235.

FILED
JAN 27 1900
JAMES H. McKENNEY

Supreme Court of the United States.

OCTOBER TERM, 1899. NO. 235.

THE CREDITS COMMUTATION COMPANY and THE COMBINATION BRIDGE COMPANY,

Appellants,

vs.

OLIVER AMES, SECOND, and SAMUEL CARR, Executors of the Last Will and Testament of Frederick L. Ames, deceased,

Appellees.

TO MESSRS. JOHN C. COOMBS, ESQ., AND HENRY J. TAYLOR, ESQ., COUNSEL FOR APPELLANTS ABOVE NAMED:

Please take notice that on the 26th day of February, 1900, at the opening of the court, or as soon thereafter as counsel can be heard, the motions of which copies are herewith served on you, will be submitted to the Supreme Court of the United States for the decision of the Court thereon.

Also herewith served is a copy of the brief or argument to be submitted with the said motions in support thereof.

Dated January 27, 1900.

WILLIAM R. KELLY,

Counsel for Appellees S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, Receivers, and The Union Pacific Railway Company.

235.

Office Supreme Court
JAN 27 1900
JAMES H. McKENNEY
Cl

Supreme Court of the United States.

OCTOBER TERM, 1899. NO. 235.

The CREDITS COMMUTATION COMPANY and the COMBINATION BRIDGE COMPANY,

Appellants,

vs.

OLIVER AMES, SECOND, ET AL.,

MOTION TO DISMISS OR AFFIRM BY APPELLEES THE UNION PACIFIC RAILWAY COMPANY AND S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, FREDERIC R. COUDERT AND JOHN W. DOANE, RECEIVERS.

Come now the appellees herein, The Union Pacific Railway Company and S. H. H. Clark, Oliver W. Mink, E. Ellery Anderson, Frederic R. Coudert and John W. Doane, by W. R. Kelly, their counsel, appearing in that behalf, and move the Court to dismiss the appeal in the above-entitled cause for want of jurisdiction, because,

FIRST. The order of the Circuit Court of the United States for the District of Nebraska, from which the said appeal is taken, is not a final decision of the said Circuit Court of the United States within the meaning of Section 6 of the Act of Congress approved March 3d, 1891, entitled "An Act to establish Circuit Courts of Appeals and to define and regulate in certain causes the jurisdiction of the Courts of the United States, and for other purposes," and hence said Circuit Court of Appeals had no jurisdiction of the appeals taken to it, and, for like reason, the Supreme Court has no jurisdiction of the present appeals.

SECOND. It was within the legal discretion of the Circuit Court of the United States for the District of Nebraska to grant or deny the application of the appellants for leave to intervene in the pending causes, and that Court, in denying such application, exercised its discretionary powers, and its action could not be reviewed by the Circuit Court of Appeals, and will not be reviewed by this court.

THIRD. The appellants never became parties to the suits in which intervention was sought, and in which the orders refusing such intervention were entered.

FOURTH. The petitions of the Credits Commutation Company and the Combination Bridge Company for leave to intervene, and the order denying such petitions, do not constitute a case within the meaning of the Constitution of the United States and of the Act of Congress of March 3d, 1891, establishing the Circuit Courts of Appeals and defining their jurisdiction, and hence,

FIFTH. The order of the Circuit Court of the United States for the District of Nebraska, being non-appealable and properly so held by the Circuit Court of Appeals, the same will not be reviewed by the Supreme Court on appeal from the order of the said Circuit Court of Appeals.

And the said appellees, by counsel as aforesaid, also move the court to affirm the said judgment or decree from which said appeal purports to have been taken, because, although the record in the said cause may show that this court has jurisdiction in the premises, yet it is manifest that the said appeal was taken for delay only.

WILLIAM R. KELLY,

Counsel for appellees The Union Pacific Ry. Co. and S. H. H. Clark *et al.*, Receivers, for the purpose of this motion.

177 311
L-ed 782
106 f 378

177 311
L-ed 782
110 f 30

CREDITS COMMUTATION COMPANY v. UNITED STATES.

SAME v. DEXTER.

SAME v. AMES.

177 311
44 L-ed 782
112 f 645
112 f 646

Nos. 233, 234, 235. Submitted February 26, 1900. — Decided April 9, 1900.

177 311
44 L-ed 782
s 20 SC 636
117 f 999

When leave to intervene in an equity case is asked and refused, the order denying leave is not regarded as a final determination of the merits of the claim on which the intervention is based, but leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding.

The action of the court below, in denying the petitions to intervene, was an exercise of purely discretionary power, and was not final in its character.

On October 9, 1893, Oliver Ames, 2d, and Samuel Carr, executors of Frederick L. Ames, deceased, and Peter B. Wyckoff and Edwin F. Atkins filed in the Circuit Court of the United States for the Eighth Circuit a bill of complaint against the Union Pacific Railway Company and a number of other companies in which the Union Pacific Railway Company had interests, praying for the appointment of receivers, the enforcement of certain alleged liens, and the administration of the properties of the Union Pacific Railway Company. On October 13, 1893, S. H. H. Clark, Oliver W. Mink and Ellery Anderson were appointed receivers, and on November 13, 1893, upon petition of the Attorney General of the United States, John W. Doane and Frederick R. Coudert were appointed additional receivers.

On January 21, 1895, a bill of complaint was filed in the said Circuit Court by F. Gordon Dexter and Oliver Ames, 2d, as trustees of the first mortgage of the Union Pacific Railway Company, to foreclose that mortgage.

At the May term, 1897, the United States filed, in the Circuit Court of the United States for the Eighth Judicial Circuit, a bill of complaint against the Union Pacific Railway Company, and against S. H. H. Clark, Oliver W. Mink, Ellery Anderson, John W. Doane and Frederick R. Coudert, who had theretofore, on October 13, 1893, in the suit brought in said court by Oliver Ames, Samuel Carr and others against the said Union Pacific

Railway Company, been appointed receivers therefor, and against F. Gordon Dexter and Oliver Ames, as trustees, the Union Trust Company of New York, as trustee, J. Pierpont Morgan and Edwin F. Atkins, trustees, the Central Trust Company of New York, as trustee. The object of this bill was to secure a decree of foreclosure of the subsidy lien of the United States upon the property of the Union Pacific Railway Company between Council Bluffs, Iowa, and a point five miles west of Ogden, Utah.

On April 28, 1897, the Credits Commutation Company, a corporation of the State of Iowa, filed a petition in each of said three cases, praying for leave to intervene therein as a party, and to be heard to assert certain alleged rights and interests. On May 22, 1897, the Combination Bridge Company, a corporation of the State of Iowa, also filed petitions in said cases for leave to intervene therein for the same reasons set forth at length in the petitions of the Credits Commutation Company. On May 24, 1897, after hearing the counsel of the respective parties, an order was entered by the Circuit Court denying the prayers for leave to intervene, and on the same day an appeal was allowed to the Circuit Court of Appeals for the Eighth Circuit. On December 7, 1898, motions by the appellees to dismiss said appeals were sustained, and said appeals were accordingly dismissed; and thereupon the appellants in open court prayed an appeal to this court, which was allowed. *Credits Commutation Company* v. *Ames' Executors*, 62 U. S. App. 728. Motion to dismiss or affirm was submitted.

Mr. John F. Dillon, *Mr. W. R. Kelly* and *Mr. G. M. Lambertson* for the motion.

The Attorney General and *Mr. John C. Cowin* filed a brief in support of the motion.

Mr. Henry J. Taylor and *Mr. John C. Coombs* opposing.

Mr. Justice Shiras delivered the opinion of the court.

The Credits Commutation Company and the Combination

Bridge Company, corporations of the State of Iowa, filed petitions for leave to intervene in three suits against the Union Pacific Railway Company. The object of those suits was to enforce by foreclosure the payment of bonds secured by mortgage and of a debt due to the United States created by certain subsidy bonds, and, pending such proceedings, the appointment of receivers to prevent the disintegration of properties of the railway company.

The Combination Bridge Company is the owner of a bridge across the Missouri River at Sioux City. The Credits Commutation Company is the owner of the stock of the bridge company, and also of interests in the capital stock of certain railroads connected by the said bridge. The petition alleges that the Credits Commutation Company was organized for the purpose of connecting said bridge and railroads with the Union Pacific Railway.

The Union Pacific Railway Company is a consolidated company, composed of the Union Pacific Railroad Company and the Kansas Pacific Railway Company, and Congress, by the act of July 1, 1862, in order to "secure to the Government the use of the same," conferred upon said companies grants of large and valuable tracts of the public lands, and further subsidized said companies by an advance to them of the public credit in the form of bonds of the United States. The fifteenth section of the said act of July 1, 1862, was in the following terms:

"And be it further enacted, That any other railroad company now incorporated, or hereafter to be incorporated, shall have the right to connect their road with the road and branches provided for by this act, at such places and upon such just and equitable terms as the President of the United States may prescribe. Wherever the word company is used in this act it shall be construed to embrace the words their associates, successors and assigns, as if the words had been properly added thereto."

The petition alleges that the Credits Commutation Company was organized in the latter part of 1894, but admits that said company has abstained from making any application to the President of the United States to fix the place at which and the

just and equitable terms upon which said company should build a railroad to connect with the road of the Union Pacific Railway company, because the latter company had been embarrassed and all its property was in the hands of receivers, and bills to foreclose in behalf of the holders of mortgage bonds and to enforce the creditor rights of the United States had been filed. It seems to be the theory of the petitioners that, under the provisions of the act of Congress, they have a right to connect their railroads, now or to be constructed, with the railroad of the Union Pacific Railway Company, and that they have, therefore, a right to intervene in the foreclosure proceedings, in order to protect their right to so connect and to protect the right of the public in such railroad connections.

As heretofore stated, the Circuit Court denied the petitions for leave to intervene, and upon appeal to the Circuit Court of Appeals that court dismissed the appeals. The view of the Circuit Court of Appeals was that the order of the Circuit Court refusing leave to intervene was not a final judgment or decree from which an appeal could be taken, and that, at any rate, the action of the lower court in refusing leave to intervene was not reviewable on appeal, inasmuch as it rested in the sound discretion of the chancellor to admit or reject the intervention. 62 U. S. App. 728, 732.

To show that the Circuit Court, in denying the petition for leave to intervene, was not exercising the usual discretion of a chancellor in passing upon a petition of an outside party for leave to intervene, but adjudicated the petitioners' rights asserted in the petitions, as if upon demurrer thereto, we are pointed to the language used: "Ordered, that the prayers of the petitioners for leave to intervene herein be and the same are hereby denied, not as matter of discretion, but because said petitions do not state facts sufficient to show that the petitioners, or either of them, have a legal right to intervene."

It is urged that the Circuit Court declined to treat the subject as of one of discretion, and elected to determine the legal rights of the petitioners, so as to preclude them from resorting thereafter to some other tribunal, and that, therefore, its judgment was a final one and properly reviewable on appeal.

We cannot accept this view of the meaning and effect of the order in question. What was sought in the petitions was leave to intervene in a pending and undetermined cause, and that right alone was determined. The very terms used by the court, that the facts stated were "not sufficient to show that the petitioners, or either of them, have a legal right to intervene," shows that what was considered was the right to intervene. That right refused, the petitioners were left free to assert such other rights as they might possess in any other tribunal. That this was the view of Judge Sanborn himself is seen in the following language of his opinion:

"Whatever the petitioner's right or interest may be, it is nothing more than a contingent, speculative future possibility. It is contingent, because it is conditioned upon the construction of a railroad. It is speculative, because it depends for its existence upon the question whether or not capitalists shall see sufficient profit in the construction of such a railroad to induce them to put in the necessary money for that purpose. It is future, because it has not yet come into existence, and it is possible because it may come into existence. Courts of equity are not accustomed, perhaps they have not the power, to adjudicate upon possible rights which are not in being and which are merely susceptible of coming into being at some unlimited time in the future."

The question was well considered by the Circuit Court of Appeals, and we quote and adopt its statement, as follows:

"When such an action is taken, that is to say, when leave to intervene in an equity case is asked and refused, the rule, so far as we are aware, is well settled that the order thus made denying leave to intervene is not regarded as a final determination of the merits of the claim on which the intervention is based, but leaves the petitioner at full liberty to assert his rights in any other appropriate form of proceeding. Such an order not only lacks the finality which is necessary to support an appeal, but it is usually said of it that it cannot be reviewed, because it merely involves an exercise of the discretionary powers of the trial court. . . . It is doubtless true that cases may arise where the denial of a third party to intervene therein would be

a practical denial of certain relief to which the intervenor is fairly entitled, and which he can only obtain by an intervention. Cases of this sort are those where there is a fund in court undergoing administration to which a third party asserts some right which will be lost in the event that he is not allowed to intervene before the fund is dissipated. In such cases an order denying leave to intervene is not discretionary with the chancellor, and will generally furnish the basis for an appeal, since it finally disposes of the intervenor's claim by denying him all right to relief. The cases at bar, however, are not of that character. The petitioners were under no obligation to intervene in the litigation against the Union Pacific Railway Company to preserve their alleged right to form a junction with the road of that company when they should have completed their own road to a suitable junction point. The question which they sought to litigate in the pending litigation, could, we think, with more propriety and with less difficulty, have been litigated by an independent bill after they had completed, or were about completing, their line to a suitable junction point. Prior to that time the questions which they sought to raise by means of the intervening petitions were speculative questions, which the lower court, as we think, very properly, refused to consider or determine."

In *Connor* v. *Peugh*, 18 How. 394, it was said by Mr. Justice Grier, giving the opinion of the court:

"On the 5th of June, 1855, the tenant in possession came into court for the first time, and moved to set aside the judgment and execution issued thereon, and to be allowed to defend the suit for reasons set forth in her affidavit. The court refused to grant this motion, 'whereupon the said Mary Ann Connor prayed an appeal.'

"The tenant in possession having neglected to appear and have herself made defendant and confess lease, entry and ouster the judgment was properly entered against the casual ejector. No one but a party to the suit can bring a writ of error. The tenant having neglected to have herself made such, cannot have a writ of error to the judgment against the casual ejector. The motion made afterwards to have the judgment set aside and for

leave to intervene was an application to the sound discretion of the court. To the action of the court on such a motion no appeal lies, nor is the subject of a bill of exceptions or a writ of error."

In *Ex parte Cutting*, 94 U. S. 14, it was held that an appeal does not lie from an order of the court below, denying a motion in a pending suit, to permit a person to intervene and become a party thereto. *Guion* v. *Liverpool, London, &c., Ins. Co.*, 109 U. S. 173, is to the same effect.

Whether the contention of the petitioners that, under the legislation of Congress, they and railroad companies similarly situated had a right to connect with the road of the Union Pacific Railway Company, or shall have such a right with respect to that road in the hands of purchasers under the decree of foreclosure, at such places and upon such just and equitable terms as the President of the United States may prescribe, were not questions that, under the pleadings and evidence, were before the Circuit Court for its determination; and as its action, in denying the petitions to intervene, was an exercise of purely discretionary power, and not final in its character as respects such alleged right to connect, we think the Circuit Court of Appeals was right in holding that the appeals could not be entertained by that court, and its decree, dismissing the same, is accordingly

Affirmed.

MR. JUSTICE MCKENNA took no part in the decision of the cases.